S. HRG. 104–112

104

NATIVE AMERICANS PROGRAMS ACT OF 1974
INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

Y 4. IN 2/11: S. HRG. 104-112

Native Americans Programs Act of 19... ARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

S. 510

TO EXTEND THE AUTHORIZATION FOR CERTAIN PROGRAMS UNDER THE NATIVE AMERICAN PROGRAMS ACT OF 1974

AND

S. 441

TO REAUTHORIZE APPROPRIATIONS FOR CERTAIN PROGRAMS UNDER THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

MARCH 22, 1995
WASHINGTON, DC

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THE NATIVE AMERICAN PROGRAMS ACT OF 1974 AND THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT

WEDNESDAY, MARCH 22, 1995

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 3 p.m. in room 485, Russell Senate Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Wellstone and Dorgan.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. I apologize for the late commencement of this hearing. As you may have been told we had three consecutive votes on the floor of the Senate, and also, I am managing the line item veto bill. I apologize and appreciate the patience of the witnesses.

Senator Inouye is at a markup on the Defense Appropriations Subcommittee of the Appropriations Committee. So he cannot be here. He has submitted a statement that will be included in the record immediately following mine.

I appreciate the effort everyone has made to attend this hearing. We have two separate matters to take up.

First we will take testimony on S. 510, a bill to reauthorize appropriations for certain administration for Native American programs to the year 1999.

Second, we will receive testimony on S. 441, a bill to reauthorize appropriations for Indian Child Protection and Family Violence Prevention programs. We hope to favorably report both bills to the full Senate 1 week from today.

Our first panel of witnesses will focus on ANA reauthorization. Our witnesses will be the ANA Commissioner, Gary Niles Kimble, and the Executive Director of the Council of Energy Resource tribes, David Lester. Mr. Lester previously served as ANA Commissioner, and is an old friend.

I was pleased to have the vice chairman on Indian Affairs, Senator Inouye, as well as Senator Campbell, join me in cosponsoring S. 510. The ANA grants program is extremely vital to a wide variety of efforts to strengthen the governing structures and self-sufficiency of Indian tribes and native communities. Each year ANA awards several hundred grants. While small in size, ANA grants

have spawned an enduring legacy of self-determination and self-governance in tribal and native communities. ANA has earned strong support from Indian and Alaska Native tribes across the country.

Although the administration has requested ANA funding for 1996 and 1995 levels, it has yet to forward a bill to the Congress to reauthorize ANA. ANA's survival is at issue because of the new Rules of the House of Representatives. Under these rules, any fiscal year 1996 appropriations provision that funds an unauthorized program may be subject to a point of order objection. Accordingly, the House will be under pressure to zero-out any appropriations matter for which there is no fiscal year 1996 authorization. If the continuation of the ANA program is to be assured, S. 510 will need to be enacted before the House takes up the Interior and Related Agencies appropriations bill in May or June. Because prompt action to reauthorize ANA is essential, S. 510 as introduced contains only those provisions having the unqualified support of the administration.

The second and third panel of witnesses will focus on S. 441, a bill to reauthorize the Indian Child Abuse and Family Violence Prevention Act. The authorization for appropriations for the Act expire this year. S. 441 was introduced as a 2-year reauthorization in order to ensure that funding requested by the administration's fiscal year 1996 request will be included as part of the House Interior Appropriations bill.

[Text of S. 510 and S. 441 follows:]

II

104TH CONGRESS
1ST SESSION

S. 510

To extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 7 (legislative day, MARCH 6), 1995

Mr. MCCAIN (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS FOR NATIVE AMERICAN SOCIAL AND ECONOMIC DEVELOPMENT STRATEGIES GRANT PROGRAM.

Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) in subsection (a), by striking "for fiscal years 1992, 1993, 1994, and 1995." and inserting

"for each of fiscal years 1995, 1996, 1997, 1998, and 1999."; and

(2) in subsection (c), by striking "and 1996," and inserting "1996, 1997, 1998, and 1999,".

II

104TH CONGRESS
1ST SESSION

S. 441

To reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16 (legislative day, JANUARY 30), 1995

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To reauthorize appropriations for certain programs under the Indian Child Protection and Family Violence Prevention Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF PROGRAMS.

Sections 409(e), 410(h), and 411(i) of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208(e), 3209(h), and 3210(i), respectively) are each amended by striking "and 1995" and inserting "1995, 1996, and 1997".

The CHAIRMAN. It is no secret that I have grown increasingly frustrated by the failure of the BIA and the IHS to effectively implement the act. In fact, in recent days, I have been repeatedly asked why I would request the reauthorization of a law that has never been implemented. The answer is simple, it is fundamentally unfair for Indian victims of child abuse and family violence to go without services. It is also patently unfair that, through no fault of their own, they may lose the precious few dollars that have been available for victims of child abuse and family violence. I don't want to belabor this point.

But, I do want to make my intentions very clear. Once these programs have been reauthorized, I do intend to introduce legislation to amend the act to avoid the weak excuses by the BIA and the IHS for their failure to implement the act. I will make every effort to see that each agency is accountable and responsible for its own activity, or lack thereof.

I look forward to receiving the testimony of all the witnesses on this important matter, in particular, from Dr. Schacht and Ms. Keenan, who have appeared before this committee on several occasions to address these issues. I would just like you to know that I place great weight on the information that both of you have provided to the committee because you continue to provide a necessary service to Indian children and their families despite your severely limited resources. You are a living example of the type of tribal and personal commitment that this committee, and the Congress, had in mind when the original act was passed.

[Prepared statements of Senator McCain and Senator Inouye appear in appendix.]]

The CHAIRMAN. I'd like to welcome members of the first panel, Gary Niles Kimble, Commissioner of the Administration for Native Americans, and David Lester, the Executive Director of the Council Energy Resource Tribes of Denver, Colorado.

I would wonder if Senator Dorgan would have any opening comments?

Senator DORGAN. Yes, Mr. Chairman; Thank you very much.

STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. I will be very brief I have to be at a Government Affairs meeting that started at 3 p.m., but I had intended and wanted to be here, especially to hear several witnesses, particularly Ada Deer. I wanted to say at the outset, even though I can't be here for her testimony, I have read her written statement.

This issue of S. 441, reauthorizing the Indian Child Protection and Family Violence Prevention Act, is no small matter. We need to reauthorize it and then we need to have programs that are effective in protecting vulnerable children.

Ada Deer came to North Dakota, where I have held two hearings on the issue of child abuse on reservations. Ada Deer came to the most recent hearing I held in Bismarck, North Dakota, and I'm telling you it breaks your heart to listen to what's happening.

Ada Deer will recall a young woman named Theresa, who runs one of the tribes' social services offices. trying to respond to the issue of child abuse. She had just come into that office. She is now

gone, by the way. She discovered—not even in filing cabinets, but on the floor—stacks of reports of sexual abuse, of violence, many of which had never even been investigated.

There are 2-year-old, and 4-year-old, and 8-year-old kids out there, victims of violence, victims of sexual abuse, and we have laws on the books with no funding for them. We either need to start getting serious and funding these things, and decide we are going to protect children, and meet our responsibilities, or stop having hearings about reauthorization bills.

Without elaborating at great length, Mr. Chairman, I got interested in this issue because of a young woman named Tamara, who on one of our reservations was place in a foster home by a social worker who was working on 150 cases. She put this 3-year-old girl in a foster home that she hadn't checked properly because she didn't have the time. This 3-year-old girl had her nose broken, her arm broken, her hair pulled out by the roots during a drunken party. She was a 3-year-old victim of child abuse of the most violent kind.

I met her one day and will never forget looking at this little girl, understanding she was our responsibility. We are the ones who have a responsibility to make sure that this abuse doesn't happen. I can tell you story after story after story I have heard in public hearings I have held since then.

One way or another, in my service on this committee, or in some manner, I am going to try to find a way that we don't have to hear stories like that any more; that young children who are abused because no one cared enough are sure that this won't happen again.

Last year, I went to the floor of the Senate and tried to get $1 million for a little program, a pilot program, to put some case workers in to try to protect some of these kids. I was so angry at the end of it because I didn't get it done. It got left out. It wasn't a big deal, but it is a big deal in the lives of children that it would have protected. When the program got left out, I pointed out that there will be kids whose lives will be different because of this, whose hopes will disappear, whose dreams will be broken, whose spirits and, probably, whose physical persons will be violated because of this.

I wanted to come today to say that I respect Ada Deer and her leadership at the BIA. I want her to be aggressive. I want the BIA to be aggressive. I want us in Congress to understand that our first and most important responsibility is to these children.

If we can't meet our trust responsibility to protect children against violence and sexual abuse, then we can't meet any responsibility.

I look forward to working with you, Mr. Chairman. You have a wonderful record of commitment and caring on these issues. I am going to stimulate and push in every way that I can in the coming months to see that we finally, finally move to fund the kind of programs in the Indian Child Protection and Family Violence Prevention Act that can start helping kids on our reservations.

The CHAIRMAN. I want to thank you, Senator Dorgan, for not only a very important and I think heartfelt statement, but also for your commitment on this very gripping and tragic issue for many years. I very much appreciate your assistance. I am grateful that

we have people like you working here in the U.S. Senate on behalf of this very unfortunate situation.

Thank you, Senator Dorgan. I understand why you have to go to the Government Affairs Committee, and even though you may miss this round of questioning, I know that you will be involved in hearings and discussions on this issue until we get some final conclusion to it. Thank you very much, Senator Dorgan.

Mr. Kimble, would you like to begin?

STATEMENT OF GARY NILES KIMBLE, COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY MARTIN KOENIG, ACTING EXECUTIVE DIRECTOR, INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS; AND VILMA GUINN, SPECIAL ASSISTANT TO THE COMMISSIONER, ADMINISTRATION FOR NATIVE AMERICANS

Mr. KIMBLE. Thank you, Chairman McCain and Senator Dorgan.

It is my great pleasure to come before you today in support of the reauthorization of the Native Americans Programs Act, S. 510, which is, of course, administered by the Administration for Native Americans.

I would like to say, Senator McCain, that there is a strong administration commitment to address the critical issues that confront tribes and Native American communities, as well as to help them achieve their social, economic and governance objectives through ANA financial assistance. I look forward to reporting grantee progress to this Committee so we can continue this important work.

The Administration for Native Americans is a small agency with a big mission which we take very seriously. The impact of our philosophy and policies is visible and viable in Native American communities across the country, in Alaska, and the Pacific Islands.

We have had an increase in terms of what we see to be our responsibility. ANA now serves over 550 federally-recognized tribes, including 220 Alaska Native tribal governments; about 60 tribes that are State-recognized or seeking Federal recognition; Indian and Alaska Native organizations; Native Hawaiian communities, and native populations throughout the Pacific Basin.

The reauthorization of the Administration for Native Americans will assist Native American communities and their citizens to carry out important infrastructure developmental steps toward social and economic self-sufficiency in several key ways.

We are proposing to reauthorize through 1999, the Native American Social and Economic Development Strategies Grant Program. It will allow us to continue to support activities which cover a wide range of interrelated social and economic development efforts, including the expansion and creation of businesses and jobs in many areas and governance projects which include the development of new and existing tribal constitutions and by-laws.

We will also continue to support community efforts to preserve native languages and meet their environmental enhancement responsibilities.

Finally, as shown in our 1996 Congressional justification, we plan to allocate $1 million of the fiscal year 1996 ANA appropriation for the Native Hawaiian Revolving Loan Fund. The loan fund promotes economic development activities for Native Hawaiians.

ANA's philosophy is to respect the right of self-determination and self-governance of all tribes and Native American communities and organizations. In this context, the ANA system allows them to develop their own strategies so that Native American communities can move their citizens toward self-sufficiency. We define a Native American Community as self-sufficient when it can generate and control the resources necessary to meet its social and economic goals and the needs of its members.

This policy is based upon two fundamental principles. The local community and its leadership is responsible for determining its goals, setting priorities, and is in the best position to apply its own cultural, political, and social economic values to its long-term strategies.

That economic and social development and governance are interrelated. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

In governance and social and economic development strategies in 1994, ANA awarded 215 grants for governance, social and economic development projects. These grants include the expansion and creation of businesses and jobs; youth leadership and entrepreneurial projects; tourism enterprises; shopping centers; diversified agricultural projects; cultural centers; the first Native American tour business; fisheries; energy and natural resource management; fish and wildlife preservation, and so on.

Some of the accomplishments of the tribes and Native American communities with SEDS grants include innovative business enterprises developed through these grants such as the Navajo Nation at Window Rock, AZ, which has a Navajo Arts and Crafts Cooperative underway at Crownpoint; and includes several small manufacturing shops operated by community members.

In Scottsdale, AZ, the Salt River Pima-Maricopa Indian Community has begun commercial development planning for 40 acres that surround a strategic freeway intersection that is under construction. The market in this location will generate tribal jobs and income.

The Nambe Pueblo in New Mexico has the only Native American owned and operated tour business in Santa Fe. In North Carolina, the Cumberland County Association for Indian People's Senior Citizen Day Care Center established a self-sustaining business called The Native American Scene, providing interior and exterior designs, landscaping, and architectural consultant advice.

The Ke-Kua'aina Hanuana Hou, on the island of Moloka'i, has a viable aquaculture project based on an edible seaweed called long ogo, which creates jobs not otherwise available on the island.

The Alaskan Sea Otter Commission is a consortium of six Alaska Native regions that will restore to Native tribal groups their traditional managerial authority over the sea otter, a vital resource for the traditional subsistence lifestyle and economy of coastal Alaska Natives.

Of course, the ANA also assists tribes with status clarification and Federal recognition.

Under the Native Languages Preservation and Enhancement Act, 18 projects were funded for the survival and continuing vitality of Native American languages. They include research on current Native language use; development of specialized curricula; language immersion camps for youth; and incorporating tribes' languages in the tribal Headstart programs.

With Environmental Regulatory Enhancement grants, tribes and Alaskan village governments are operating 26 environmental regulatory enhancement projects that build professional staff capacity to develop tribal environmental statutes and establish community environmental quality standards. The projects also help tribes and village governments meet Federal environmental requirements.

The mitigation of environmental damage from DOD activities on Indian lands is an important program for ANA. In fiscal year 1995, 19 grants were approved for the mitigation of serious damage to Indian lands due to Department of Defense activities. Briefly, Senator McCain, the projects will address mitigating the damage to treaty-protected spawning habitats caused by artillery practice and damage caused to tribal range and forest lands by gunnery range activities, leakage of underground storage tanks on lands taken from Indians for temporary wartime use by the Department of Defense, and unexploded ordnance from gunnery and bombing practice on Indian reservation lands. These grants are funded by a transfer of funds from the Department of Defense to ANA.

ANA progress on the Implementation of Public Law 102–375: We have made excellent progress, of course, in implementing this act. The phase I report to Congress, which was signed by the Secretary, I believe was delivered to the Senate this morning.

The Annual Report to Congress on the Social and Economic Conditions of Indians is in clearance. We were able to complete that report, Senator McCain, and send it to the Department. You should be getting it shortly.

In conclusion, I hope I have conveyed to you the vital role that ANA plays in implementing a living model of the government-to-government relationship with the tribes and Alaska village governments that helps them to carry out their governmental responsibilities.

I think this translates into understanding the complex subtleties that must be taken into account in developing the program policies that affect Native Americans and ensuring there is consultation with them so we can do the best job possible. In ANA we can unequivocally state that this approach has proven to be the most effective way to ensure successful program results and Native American progress toward self-sufficiency. All Federal agencies have a trust responsibility, and this is one way to honor this responsibility, here at Health and Human Services.

I look forward to working with this committee to build upon ANA's support of Native American self-governance and economic development. I would be happy to answer any questions you might have at this time.

[Prepared statement of Mr. Kimble appears in appendix.]

The CHAIRMAN. Thank you very much, Commissioner Kimble.

Mr. Lester, I did have a chance last night to read your full statement, and it will be made part of the record. Welcome back before the committee.

STATEMENT OF A. DAVID LESTER, EXECUTIVE DIRECTOR, COUNCIL OF ENERGY RESOURCE TRIBES, DENVER, CO

Mr. LESTER. Thank you, Chairman McCain. It is a pleasure to be before you again.

For the record, I am A. David Lester, Executive Director of the Council Energy Resource Tribes. I am also here, Mr. Chairman, speaking on behalf of a broad national coalition, in support of Native Americans for the Administration for Native Americans.

We are here to support ANA, mainly because ANA works. As the commissioner's testimony amply demonstrates, in all phases of the program, in its social development, economic development, and strengthening leadership and governing systems, it is working.

The reasons we believe that it is working is because ANA responds to locally determined initiatives for social and economic progress. It is not a top down program. Its success is the cumulative success of the communities that it supports through its financial grants.

Second, ANA provides leadership in the Federal establishment within the Department, through the Intradepartmental Council on Indian Affairs, or Native American Affairs, now; and also through its aggressive coordination through its interagency funding strategies to enhance the beneficial impacts at the local level.

Third, ANA policies rely on local leadership and local initiative. For this, we believe it's the prototype Federal agency.

When ANA converted from a social services agency to a developmental agency in 1981, it aggressively supported local initiative. The ANA approach, we believe, reflects the substance and the spirit of Native American people to become increasingly self-reliant.

We think it is also wholly compatible with the spirit of governmental reform that is now sweeping across all levels of government in the United States.

I would like to register here for the record some concern that I have been asked to convey by many Native American groups across the country. That is, in the rush to reinvent government, that we don't violate a sacred contract that the country has with tribes. In particular, with the HHS, a department whose ties to State government is very strong, and whose support of tribal government is very tenuous. That their approach that they don't sweep all of the programs under State managerial control, thereby reducing tribal government to de facto subdivisions of State government.

[Prepared statement of Mr. Lester appears in appendix.]

The CHAIRMAN. Thank you very much, David. Let me say that I think your concerns, and those relayed by you, are well based. What we need to do is perform and education program to explain the intricacies of tribal sovereignty, self- determination, etc., to new members of Congress, and frankly, members of HHS.

Last year, you might remember, when the President's budget came, and there was significant cuts made in IHS in relation to the entire Health and Human Services budget, we were able to exercise remedial action. Now, it has been somewhat complicated by new

members of Congress who have had no interface with Native American issues. But, I take your message, and I'll do what I can to act on it.

Mr. LESTER. Thank you very much, Mr. Chairman.

The CHAIRMAN. The latest manifestation, I know you know, is this $17 billion recision package, which does entail some cuts, which both Senator Inouye and I are in opposition to; which would be very damaging in my view. Of course, we will enlist the assistance of our very articulate new colleague, Ben Nighthorse Campbell, in that effort.

Mr. Kimble, thank you for your testimony. S. 510 as introduced, doesn't include reauthorization of the Native Hawaiian Loan Fund, because the White House staff informed the committee the administration was reconsidering its earlier support for the fund.

Can you tell what the latest position is on that issue?

Mr. KIMBLE. We had discussed it at length, as you can appreciate, Senator McCain, in terms of my testimony. I had a concern that we address the issue. As you can read from my statement our philosophy is to ensure that we plan to allocate the $1 million.

The CHAIRMAN. Yes; I did see that.

Mr. KIMBLE. Unfortunately, we don't have any more information than I think you and your staff do in terms of what the White House might be planning in terms of a position on that.

The CHAIRMAN. By next week, we'd like to mark it up and get it to the floor, and so I'd appreciate it if you could urge them to come to a decision on that, if possible.

Mr. KIMBLE. Sure.

The CHAIRMAN. I happen it is a very good program. Obviously I am very supportive of it, as is Senator Inouye. We'd like to try to get that resolved one or the other. I'd appreciate your help on that.

Mr. KIMBLE. I fell the same way you do, in that we plan to allocate the dollars. Certainly I and the staff at Health and Human Services will continue to make those inquiries to see if that might be cleared so that we can get on with that portion of the reauthorization.

The CHAIRMAN. As I pointed out in my statement, you know the problem is that if you appropriate funds and the program is not authorized, then it is immediately subject to a point of order on the floor of the House. That procedure has a lot of virtue associated with it, but I am worried about the vulnerability now, that the Native Hawaiian Loan Fund would be subjected to.

Do you have any views on my legislation which would elevate the position of the Director of IHS to Assistant Secretary level?

Mr. KIMBLE. We don't have an official position on that, Senator McCain. As you know, there is a great deal of discussion about how Government can be streamlined. Unfortunately, I am too low on the totem pole to be privy to a lot of information. Certainly, I wouldn't have any comments at this time. I would probably leave those comments to somebody with more authority than I have.

The CHAIRMAN. There is no doubt the administration supports reauthorization of ANA. Is that correct?

Mr. KIMBLE. Yes.

The CHAIRMAN. Good. Thank you for being here.

David, just one question. You mentioned in your prepared statement the Native American Languages Program. Its authority expires in fiscal year 1997. Would you please describe its importance, whether it should be reauthorized, and if so, why; and give me an example of the kind of programs that we are being involved in here?

Mr. LESTER. I will, Mr. Chairman.

Social and economic development, and the development of our communities, is not about money. That is one of the most important underlying principles.

It is about the revitalization of our communities, creating healthy, safe communities. Nothing is more fundamental than the spiritual well-being of the people. Our spirituality is directly linked to our ability to speak and pray in our language. So the strengthening of our language will strengthen our ability to confront the problems of life, and to move forward with social and economic progress.

The examples of this are numerous. We find that returning to our roots, for example, in alcohol treatment, has a far better track record than clinical approaches to therapy. That is just one example off the top of my head, Mr. Chairman.

Many tribes conduct their business in their own native language, because they cannot express the things that are in their hearts in a second language, English. English doesn't have some of the words that are in the hearts, that we need to be able to express in our own terms.

This is why it is so vital. It is not a museum or a curiosity kind of thing. It vitalizes people, and in their lives gives them motivation to move forward.

The CHAIRMAN. Thank you very much.

Mr. Kimble, we will mark up this bill and get it to the floor within the next couple of weeks.

Thank you for your testimony today, and I don't frankly thing we need to take much more of your time or ours, since we are very familiar with what you do, and we think it is very important.

Thank you for being with us today.

Mr. KIMBLE. Thank you.

Mr. LESTER. Thank you, Mr. Chairman.

The CHAIRMAN. The next panel is Ada Deer, Assistant Secretary for Indian Affairs, as we all know; Dr. Craig Vanderwagen, who is Director of the Division of Clinical and Preventive Services of the Offices of Health Programs, IHS; and Herbert Becker, who is Director of the Office of Tribal Justice, the U.S. Department of Justice.

I again want to express my thanks to the witnesses for their patience. I hope you understand that the Senate is not the most efficient organization in the country. Until the day that I am elected majority leader, I will not have control the schedule. When I am elected the majority leader, I promise we will not be interrupted nor delayed for any reason, although that may be a long wait.

I want to thank you, Ada, for being with us today. I'd like you to proceed. Obviously, all the witnesses' full statements will be made a part of the record. I'd like you to proceed in which way you deem most suitable. Thank you for being with us, and thank you again for your patience.

STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOANN SEBASTIAN MORRIS, ACTING DIRECTOR, OFFICE OF TRIBAL SERVICES AND THEODORE R. QUASULA, CHIEF, DIVISION OF LAW ENFORCEMENT

Ms. DEER. Thank you for your graciousness, Senator.

I am very pleased to be here to testify on this very important matter. I do have a summary statement which I would like to present.

I am pleased to be here to support S. 441, the Reauthorization of the Indian Child Protection and Family Violence Prevention Act. I have with me today, Joann Sebastian Morris, Acting Director of the Office of Tribal Services; and Theodore R. Quasula, Chief of the Division of Law Enforcement. They will assist me in responding to any technical questions the committee may have. We ask that our formal testimony be entered into the record.

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

Ms. DEER. Public education, both national and local, has indicated a dramatic increase in the number of child abuse and neglect reports received by the Bureau of Indian Affairs [BIA]. In 1993, BIA Social Services received 31,901 child abuse complaints, an increase of 445 percent from the statistics brought to this committee during its 1987 Child Abuse Hearings, when reports were scant.

Although the number of complaints we received in 1994 dropped to 25,919, we believe this is due to a decrease in tribal reporting, not to a decrease in reports received at the local level. BIA criminal investigators alone conducted 442 investigations of cases in which children were victims of abuse including sexual contact, incest, sexual abuse, physical abuse, and felony sexual molestation, in 1994.

We appreciate the increased efforts of tribes in reporting instances of child abuse and neglect, but much remains to be done to actually address the problem itself. It is obvious, the need is great for prevention and treatment of violence toward children and other family members. S. 441 will provide another opportunity for funds to be distributed directly to tribes for community based comprehensive prevention programs.

Even though we are currently without a child protection coordinator, collaborative efforts with the Indian Health Service [IHS], other Federal agencies and tribes continue. We have advertised this position and will select a child protection coordinator shortly.

This week we finalized a memorandum of agreement with the Department of Justice to assure that tribes will have access to FBI fingerprint criminal history records. Tribal inquiries will be funneled through the BIA at the request of the Department of Justice, whose staff are reluctant to interface directly with 553 distinct tribes.

Tribes may use contract and grant funds to pay the $22 charge for each fingerprint check, and the BIA will provide all personnel and equipment. To this end, we are finalizing proposed regulations establishing minimum standards of character, as well as program guidelines for tribal child protection and family violence programs, case load standards, and the funding formula.

We can give you and your staff a copy of these proposed regulations.

Tribal consultation was conducted last August. After which, the minimum standards of character and the funding formula were redesigned by tribal representatives and BIA personnel. Our proposed regulations make clear the continuing responsibility of tribes and emphasize that criminal history record checks are only a small part of an overall background check.

We encourage tribal hiring officials to ensure that a comprehensive review of former employment records, personal references, residences, local law enforcement records, education records, and personal interviews are conducted. The proposed regulations will be submitted to OMB for review. We anticipate publication in the Federal Register in June.

Our collaboration with other Federal agencies has been quite productive, and of benefit to tribes and young victims of crime. BIA has focused on local capacity building through the Indian Police Academy Training Programs. A regional, multi-disciplinary training program with the United States Attorneys on the identification, investigation, and prosecution of child abuse and domestic violence has been well received by tribes.

Our collaboration with tribes has included IHS. We have jointly funded the Cherokee Nation Child Abuse Prevention project. In addition, we are cosponsoring the first national Indian Family Preservation Conference in April 1995 with the Intertribal Council of Arizona.

Of course, collaboration continues within the BIA. by the Office of Tribal Services, Law Enforcement, and Education, who work closely on this issue. We have a handbook for you, prepared by our education staff. It is entitled, "Putting Children First; reporting and preventing child abuse in our schools." This has had distribution throughout our school system.

Our priority has been the funding and development of tribal rather than BIA programs. The $5 million included in the President's fiscal year 1996 budget is the beginning. While it will not provide tribes with sufficient funds to develop comprehensive child abuse and family violence prevention programs, they will at least start modest programs or enhance existing programs.

We urge the committee to maintain its strong support, as it has for so many years, for all programs essential for healthy Indian communities and families.

We appeal to you, Senator McCain, for a reauthorization of the Indian Child Protection and Family Violence Prevention Act. We will do all we can to partner with tribes and our colleagues in other Federal agencies to implement S. 441, and meet the needs of vulnerable Indian children and their families.

This concludes my statement, and I will pleased to answer your questions.

[Prepared statement of Ms. Deer appears in appendix.]

The CHAIRMAN. Thank you very much, Madam Secretary.

Dr. Vanderwagen.

STATEMENT OF CRAIG VANDERWAGEN, M.D., DIRECTOR, DIVISION OF CLINICAL AND PREVENTIVE SERVICE, INDIAN HEALTH SERVICE

Dr. VANDERWAGEN. As you may know, Dr. Trujillo would be here today, but he had a long-standing commitment to meet with the tribes in the Pacific Region with the Assistant Secretary for Health, and that precluded his attendance.

The CHAIRMAN. I am sure that you will more than adequately replace him. Maybe you should replace him anyway.

Dr. VANDERWAGEN. With me today is Dr. Nelson. You know Dr. Nelson, I believe, as well.

You have my written testimony, but I would like to highlight two or three things that I think really speak to why the reauthorization is critical. We have highlighted in the testimony some of the effective programs that we have been able to initiate and so on, but I think the act provides for continuing support of training of critical staff. It provides for continued support of technical assistance, such as our family violence prevention team. It provides for interagency collaboration, including the reports to tribal law enforcement agencies, such as the Assistant Secretary Deer just described.

I would have to say that as we move into this era of stronger self-governance and self-determination it really provides the authority and support for tribal governments to move forward by capturing information that will allow them to identify and address child abuse issues. This includes shared information with the Federal enforcement agencies. It includes the ability to develop a local registry and monitor the issues in the communities. And, most of all, the grant programs to the communities will certainly build their treatment capacity.

For all those reasons there is strong argument for the reauthorization of this act. That is the position that we take in the agency, and as a provider, the issues of treatment and prevention at the community level clearly are of concern to me and to Dr. Nelson.

Those are the comments that I would like to make at this time. We are available for questions.

[Prepared statement of Dr. Vanderwagen appears in appendix.]

The CHAIRMAN. Thank you. Welcome, Mr. Becker. It is a pleasure to have you with us.

STATEMENT OF HERBERT A. BECKER, DIRECTOR, OFFICE OF TRIBAL JUSTICE, DEPARTMENT OF JUSTICE, ACCOMPANIED BY KATHLEEN BLITZ

Mr. BECKER. Thank you, Senator. With me today is Kathleen Blitz. As the Senator knows, there is always somebody who has the answers and does the work. She is here for that purpose.

At the outset, Senator, I would ask that my full statement be submitted for the record. I would submit it in that form.

The CHAIRMAN. Without objection, your prepared statement will appear in the record.

Mr. BECKER. The Attorney General wanted me to express for her, her thanks to you for your continued support of S. 441. The Department has full support for the reauthorization of the Indian Child Protection and Family Violence Prevention Act, and the Attorney

General sees you playing a very vital and important role in that. She wanted you to know that. She is very thankful to you for that.

The CHAIRMAN. Thank you very much.

Mr. BECKER. This historical and critical act codifies the efforts of Congress, tribal leaders, and the executive branch to address and rectify the abuse of children in Indian Country. The act seeks to improve law enforcement investigations and to fund crucial services for victimized children and their families. When the Congress was enacting this act, they reviewed the devastating problems that were occurring in Indian country to the children as a result of child abuse, and in the spirit of carrying out the trust responsibility which exists between the United States and the Indian people, which I might add, is a relationship that is grounded in the Constitution and been upheld for well over 150 years by various cases in the Supreme Court, it is important that act go forward.

I want to highlight for you some of the things that the Department has done to show you that with the act that effective numbers can be generated and effective steps can be taken to address the problems of child abuse in Indian country. The act must be reauthorized to fully accomplish the goals of identifying the extent of child abuse and family violence in Indian country, reducing such incidents, and providing funds for mental health treatment for victims of child abuse and family violence in Indian country.

The Department believes that these goals can be accomplished through training, coordination, and establishment of guidelines, guidelines which actuate the purposes of the Indian Child Protection and Family Violence Prevention Act. Much progress toward these goals has been accomplished by the Department through the U.S. Attorney's Office and the Criminal Division. One means of achieving the goal is to work out various agreements with tribes, States, and the Federal entities that have responsibility in the area.

One such memorandum of understanding was entered into last year by the tribes in Oklahoma, the State, and the various there. I have a copy here as a handout. It is used by all the multi-disciplinary teams and the offices associated with this MOU, the State agencies, the FBI, the tribal law enforcement agencies, the U.S. Attorney's Office. It is a guideline that discusses the act, sets forth the procedures that must be followed, the time table for the reporting requirements, how it should be done, and other matters to make the Act effective.

The first quarter of 1994, prior to the MOU, for the Miscogee Creek Nation, showed they had 135 child abuses reported. For the first quarter of this year, after the MOU was signed, and after the guidelines were freely available, the number is now 219, an increase of some 81 cases, over 50-percent increase.

The U.S. Attorney's Office in the Northern District of Oklahoma, prior to the MOU report, had a total of four child abuse cases. Since then they have 26 reported case, six times as many. So you can take a look at these figures and extrapolate as you will, I think, throughout Indian country, to see the magnitude of unreported cases prior to the act. The act is making a difference in Indian country. It is making a difference for the children. As a result of that, I do believe that the reauthorization is critical. And, I be-

lieve as other MOU's are being entered into by other U.S. Attorney's, States, and tribes, we will see the same type of numbers come forward.

Another hallmark of the Department's commitment to these issues is the commitment of the FBI, in coordination with the BIA, for law enforcement in Indian country. Last year, there was a round table discussion held on these matters, and there is another one scheduled—and I might add it is in Prescott, so if you plan to be in Arizona the week of April 25, you might to stop by—for continuation of these kinds of conferences to include disseminating better information and encouraging better cooperation under the Act.

I think, as you can see, the Indian Child Protection and Family Violence Prevention Act has led to concrete arrangements to address child abuse in Indian country. If we can achieve these sorts of agreements in Oklahoma, where jurisdictional disputes are the most complex of any in Indian country, we certainly can do so in other areas. In my discussions with Janet Napolotano today, the U.S. Attorney from Arizona, she has indicated she is very interested in doing something similar there.

I want to thank you for this opportunity to testify in support of the act, and in closing would give you a quote from Will Rogers, a member of the Cherokee Nation, who as we all know frequented the halls of Congress, and wrote many witty things about it. He also at heart was a philosopher, and he said, "We will never have true civilization until we have learned to recognize the rights of others."

The rights of others here, of course, in this case are the rights of Indian children to enjoy the full protection of the law.

Thank you, Senator, and I am available for questions.

[Prepared statement of Mr. Becker appears in appendix.]

The CHAIRMAN. Thank you, Mr. Becker, and thank you for your commitment on this issue.

Secretary Deer, since its enactment in 1990, the BIA has received $5.1 million. How much of this money can you estimate, or can you estimate how much money has actually reached tribal programs? Have you got an estimate on that? I'd be glad to get one of your capable and able assistants to respond, if you'd like. If you'd identify yourself for the record, please.

Ms. MORRIS. Joann Sebastian Morris, Acting Director of the Office of Tribal Services.

The funding that was received up until 1991, which to date our records indicate as a total of $7.6 million, have all gone into tribal priority allocations. In recent years, the funding that has been available has been primarily to the coordination office. That funding has gone, a little over half of $700-and-some-thousand has gone for security officers for providing background checks, et cetera, and for conducting some pilot projects here and there. In looking at the records, there have been approximately 16 tribal programs specifically that have benefited from some funding through this source.

The CHAIRMAN. But there is no authorization for appropriations for hiring staff to conduct employee background under the act.

Mr. QUASULA. If I may, my name is Ted Quasula, in law enforcement in the BIA.

Aside from law enforcement, one of my other responsibilities is to ensure that background checks are conducted for those BIA employees who have control or oversight of children as part of their work responsibilities. When I came aboard in 1990, we had two people doing that for the entire BIA, affecting about 7,000 employees.

About that same time, it was clear to me that was not going to work. It had not worked, and would never work. The Director of Tribal Services at that time, at my request and others, including tribal people, allocated enough money for at least six additional positions; took approximately $67,000 per position. Since then we have expended in the neighborhood of $400,000 to $450,000 annually to fund the six positions located at some of the area offices in Indian country.

I realize that there is no authorization to hire people to conduct the background checks. It is probably splitting hairs, but the people that we hire, process their applications through the Office of Personnel Services, where you can cite title 5 U.S.C. provisions, as well as general civil service regulations in doing this.

In any case, someone somewhere had to ensure that the proper checks were done. I am probably more than glad to say that we have intercepted people who have tried to go to work for the Government who had no business dealing with anybody, much less Indian children. So to that degree it has been effective.

The CHAIRMAN. Madam Secretary, when can we expect to see the final regulations for implementing the law?

Ms. DEER. Well, as I mentioned in my statement, we have the first draft here, and OMB and the solicitor's office have to review them. It is our plan to have these out by October; proposed regulations in the Federal Register by June, and then time for comment and so on, then the final version by October.

The CHAIRMAN. Madam Secretary, I have harped on this issue for a long time, so I will be restrained. I would remind you that legislation was passed into law in 1990. It is now 5 years later.

Could you provide us, for the record, if we get $5 million next year, how many tribes will receive funding, and what level of service will this funding provide? I'd like you to provide that for the record, if you would.

[Information follows:]

A working group of tribal and Bureau of Indian Affairs representatives developed a funding formula which was revised at a national tribal consultation meeting in Oklahoma City, OK on August 31, 1994. The proposed formula is as follows:

In any fiscal year that the appropriation for Indian Child Protection and Family Violence Prevention grants to tribes exceeds 50 percent of the level of funding authorized by the act, 2 percent of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances according to the criteria published in the Federal Register. The balance of funds authorized must be distributed through a 50/50 division of the amount of funds available. Fifty percent must be distributed equally to all tribes and tribal organizations and 50 percent must be distributed on a per capita basis according to the population of children residing in the service area.

In any fiscal year that the appropriation does not exceed 50 percent of the level of funding authorized for this purpose by the act, funding must be distributed in equal amounts to all tribes and tribal organizations submitting applications.

As provided by 25 U.S.C. 3210(f), $5 million would be distributed equally among approximately 550 tribes resulting in a distribution of approximately $9,000 to each tribe.

The CHAIRMAN. Dr. Vanderwagen, are you satisfied that this law is being implemented to the best of your ability, given the funding level?

Dr. VANDERWAGEN. I think where we need to do more in strengthening the local capacity to work collectively. We feel that probably is where the most need for continued effort is. Certainly, at the national level we feel comfortable that there is communication between the appropriate agencies, but we are not convinced that in every community there is that strength of bonding with the staff at that level. So I think in that aspect we have probably not completely discharged the responsibility under the law.

We could argue that that takes time, and certainly that is true, but I think some of that needs to be our initiative. That is where we think some of the ongoing support of this law will be helpful to keep people's attention focused on the issue and keep them focused on the need to get that collaboration going at the local level.

The CHAIRMAN. Mr. Becker, in your written testimony you stated there has been a dramatic increase in reporting of child abuse. Does that mean to you that there has been an increase in child abuse, or just an increase in reporting, or both?

Mr. BECKER. I believe it is the reporting. We had recently met with the U.S. Attorney's in Indian country, I think 3 weeks ago, in Santa Fe. It is their view, too, that the reporting has improved as a result of information getting out in Indian country, and that they don't think that is necessarily indicative of an increase of the level of the occurrence of the crime.

The CHAIRMAN. Can you give, given the benefit of your experience and involvement in the Department of Justice, a comparison between the problem in Indian country versus non-Indian country?

Mr. BECKER. It seem to be, based on the numbers that we are getting, much higher, a much greater problem in Indian country, and for whatever reasons, those are beyond our analysis, but it seems to be a greater problem in Indian country than in non–Indian country.

The CHAIRMAN. I would like to have, from both Ada and Dr. Vanderwagen, if we could, an estimate of how much you think the funding level should be. You can submit it for the record. I know that you support the administration's proposals. I'd like to have some personal opinions so that I can better shape our recommendations to the Appropriations Committee in this coming year's budget. I'd appreciate it if you would provide us with that.

Ms. DEER. We'll be glad to.

[Information follows:]

Our Personal opinion on how much the funding level should be to implement the Act, would require that each tribe receive $28,000. This amount for each tribe would support one child protective services or family violence caseworker including fringe benefits and support costs (25 U.S.C. 3210(f)(4). Combined with Indian Child Welfare Act funds, a minimum of $29,000 per tribe, tribes would receive at least $57,000. This amount would assure that each tribe could build a child protection and family violence program.

The total appropriation amount would be approximately $15 million.

Dr. VANDERWAGEN. Mr. Chairman, right off the bat. We know of at least 50 Indian communities that are ready and willing to address this problem, that need the kind of support to develop the kind of treatment that we'll hear about from a couple of commu-

nities who have done an excellent job. But, there are at least 50, as I say, that we are aware of that have that kind of need for those kinds of child abuse programs.

So we will submit for the record some cost estimates, but you can see the scope of the need. That is just communities that are ready, and willing and able to deal with it. There are many others that are just getting there with that issue.

The CHAIRMAN. If you could provide us with also the names of those communities, if you have them? I think we are all aware that the readiness varies from Indian community to Indian community.

I thank you all for appearing today, and I look forward to our addressing this terrible issue. Secretary Deer, I would like to thank you for traveling to North Dakota, and being involved in this issue with Senator Dorgan. Thank you very much. Thank you for coming.

Ms. DEER. Thank you.

Dr. VANDERWAGEN. Thank you, Mr. Chairman.

The CHAIRMAN. Our next panel is Dr. Anita Schacht, who is the Director of the Child Sexual Abuse Project, Hopi Tribe, and certainly is not a stranger to this committee; and Dr. Laurel Keenan, who is the Health and Human Services Director of the Bay Mills Indian Community; and she is accompanied by Sarah Halversen, who is the Mental Health/Social Services Coordinator.

Welcome, it is nice to see you again, Dr. Schacht. Please proceed with your statement in whatever way you choose to present it.

Your written statements will be made part of the record of this hearing.

STATEMENT OF ANITA SCHACHT, PH.D., DIRECTOR, CHILD SEXUAL ABUSE PROJECT, HOPI TRIBE, KYKOTSMOVI, AZ.

Dr. SCHACHT. Since our written statement is available, I will just make a brief oral statement. Again, I am very honored to be here, and thank you very much for your graciousness and for your interest in this issue, and for your continued support of Indian tribes. I also send the thanks of Chairman Secakuku for that. He regrets he is not able to be here, but said to please extend his great thanks to you for your attention to this matter.

I want to very strongly support the reauthorization of this act. It already has made a difference in Indian country in several ways. It certainly set the guidelines for legal investigation, reporting, and some very important specific issues around investigation that we have already been using.

I know I often refer to this act when I talk with parts of the tribe in terms of how to implement appropriate investigation procedures. We have handouts about title IV legislation that we have used actively in the community to help set up appropriate procedures. It has been very important. I know that IHS and BIA have made beginning steps to address many of these areas. I think we owe that, a lot, to the fact that you and the committee are pushing them on this issue. I am grateful for that.

We are certainly very appreciative of the funds that we have gotten, through separate means. I think the project shows that if there is funding that is available, a lot can be done. I think at Hopi we can say that we probably stopped an epidemic of sexual abuse

from occurring in that community because of having available resources.

This act is very important for those two reasons: It has gotten very important guidelines for investigation in place, and in terms of being able to authorize essential funding that is desperately needed in Indian communities across the country. When I talk with other tribes, I am very humbled that we have been able to have resources that many tribes are desperate for. If this act was reauthorized and funded, other tribes could also be able to implement the very much needed programs for treatment and prevention on their reservations. I know that is needed across the country.

I think that abuse on reservations across the country is very, very high, from what I am hearing. These measures are desperately needed. That will conclude my statement.

The CHAIRMAN. Thank you, Doctor.

Ms. Keenan.

STATEMENT OF LAUREL KEENAN, HEALTH AND HUMAN SERVICES DIRECTOR, BAY MILLS INDIAN COMMUNITY, BRIMLEY, MI, ACCOMPANIED BY SARAH HALVERSEN, MENTAL HEALTH/SOCIAL SERVICES COORDINATOR.

Ms. KEENAN. Good afternoon, Senator McCain. My name is Laurel Keenan. I am Tribal Health and Human Services Director of Bay Mills Indian Community. Assisting me today is Sarah Halversen, who is the Mental Health/Social Services Coordinator.

You have some written testimony that we presented. We have also prepared additional brief comments on sections 409, 410, and 411.

We certainly support your bill. There is a documented need in our community, as you know. In 1990, we had a crises where approximately 24 percent of our youth, ages 1½ years to 17 years were involved in a child sexual abuse crises.

The CHAIRMAN. What was that percentage again?

Ms. KEENAN. It was 24 percent.

The CHAIRMAN. How did you arrive at that figure?

Ms. KEENAN. We counted on-reservation youth, 17 years of age and younger, and determined the percentage by the number of cases that were reported, which was 71 cases. There were some revictimization of some of those individuals.

It is important for tribes to have access to funding. In the written testimony I mentioned, how will this be done if IHS is downsizing as a result of several factors? I don't know if you have read my statement yet or not?

The CHAIRMAN. [No audible response.]

Ms. KEENAN. Thank you.

How will that be done? Also, if there is a movement toward block granting, we have not fared well with working with the States. That is also a concern of the tribe. We ask that you give some serious consideration to that.

We do have some recommendations that we have included in our paper. If I may, I would like to discuss a little bit sections 409, 410 and 411. In regard to the Indian Child Abuse Treatment Grant Program, we recommend that decisions be based on tribal need and funds be directly given to tribes.

The current resource requirement methodology that IHS uses is not responsive to the needs of smaller tribes, such as ours. If we have such a crises that we had, being a smaller tribe did not mean we needed any less services. We needed a wide array of services to address the needs of the crises.

In regards to section 410, the Indian Child Resource and Family Services Center; as a smaller tribe, the more specialized services we felt could be contracted for on a regional basis, [that is child or adolescent psychiatry or psychology]. The rationale would be that it would be more cost effective to have those services provided that way.

We also recommended regional training to train staff in child sexual abuse investigation and treatment and post-traumatic stress disorder. We cited a need for technical assistance for the development of youth programs, particularly for summer and after school programs where we are planning on offering adventure based and cultural activities to enrich our youth and increase self-esteem.

An important factor is the tribe's need to develop an awareness of factors that make a community vulnerable to a crisis, such as the one we endured in 1990. I have a couple of comments on section 411, which is recommending training. We recommend training programs be made available for professional and paraprofessional personnel who may be the first responders to family violence incidents. Most importantly, we recommend that resources and technical assistance be made available to foster community mobilization efforts aimed at increasing community awareness and changing community perceptions of the problem, and using a multi-disciplinary approach in trying to address that.

[Prepared statement of Ms. Keenan appears in appendix.]

The CHAIRMAN. Thank you very much. I appreciate your being here. That is a pretty startling percentage, 24 percent.

What would say that it is, Anita, where you are working?

Dr. SCHACHT. That is hard to estimate, although in a recent high school survey, they found that of the girls, the seniors, about one out of four were saying that they had been sexually abused. That is just the people willing to report it. The boys' incidence was much smaller, but I think that is a reporting issue. Probably 25 percent is a pretty similar estimate.

The CHAIRMAN. There has been a discussion about the need for treatment of victims of child sexual abuse. Can both of you discuss briefly the tension between funding treatment for the victims, and the funding for treating perpetrators?

Dr. SCHACHT. I think they are both essential, of course. It is an arbitrary distinction, in many ways, because they find a large proportion of perpetrators were also victims. It was precisely because of untreated victimization that they became perpetrators.

I think if you don't treat perpetrators, you are just going to continue a problem with molestation in the community. So I think that both of those are essential.

The CHAIRMAN. But, Anita, isn't it true that a pedophile, generally speaking, cannot be cured?

Dr. SCHACHT. I don't believe that. I think it depends. There are many degrees of severity. For example, in our current offender group, most of the folks in the group, are to our knowledge, one

time offenders. I think if you catch it early enough, it is very treatable. It is only if you wait until after the 150th victim, those folks are very hard to treat. But, I think early intervention is very cost-effective, especially if you start on the juvenile level, with first time offenders.

Ms. HALVERSEN. I would concur. I think treating the juvenile perpetrators is essential if we want to stop the cycle of victimization. There are some startling figures out that say the average perpetrator will have victimized 300-some individuals by the time they reach maturity and adulthood. So I think something needs to be done to intervene before we have that number of victims.

The CHAIRMAN. Ms. Keenan, in response to your statement about the block grants, we are working very hard to make sure that there would be separate block grants to tribes, as well as block grants to States, which would then give the tribes the flexibility. Unfortunately, that may not solve your or Dr. Schacht's problems, because both of you are operating on earmarked funds, not in any other way. Of course, that makes you especially vulnerable. But, I also hope that we can convince our colleagues of the gravity of this situation.

Dr. Schacht, how many years now have you been involved in this project?

Dr. SCHACHT. About 3½ years.

The CHAIRMAN. About 3½ years?

Dr. SCHACHT. Yes.

The CHAIRMAN. Can you give us a reprise as to what has happened in the last 3½ years?

Dr. SCHACHT. I think there has been a real shift in community awareness and community willingness to deal with this issue. At the beginning there was a lot of denial that anyone except for the BIA employee could possibly do this in the community. I think now there is an understanding that even family members sometimes do this. I think what comes with that is a wish that treatment be made available to the offenders as well as the victims. Because in Hopi, my impression is that nobody is considered an expendable person. Everybody plays an important part in the community. So you can't just ship off offenders forever. There is a wish that there be ways to stop this problem that is humane for all people concerned, and that stops offenders from continuing that behavior.

That has been a major shift, and I think people are much more willing to acknowledge the problem is there. They are much less ashamed and much less likely to blame themselves, or to feel like it is their fault for the offense, and more willing to take action to stop this.

The CHAIRMAN. Have you found evidence of those who are victims in the original Boone cycle now becoming perpetrators?

Dr. SCHACHT. Yes; it has happened in some situations. It is interesting. We are still learning about new Boone victims. One just came to our attention. Often what happens it will be a youth who is very disturbed, who is having an extreme emotional crisis. It will come out that they were a Boone victim and have never dealt with it, or never disclosed this. We are still at the tip of the iceberg in the terms of the actual Boone victims and the costs to them and their families.

Some of them have been perpetrators. Many more of them have had some severe behavior and emotional problems as a result.

The CHAIRMAN. Do you both find, still, that the majority of the cases are alcohol related?

Ms. KEENAN. Yes; In some cases, there is a real history of dysfunctional families. So that certainly needs to be addressed.

Dr. SCHACHT. I think with the adult offenders, there is often alcohol involved. In our juvenile offenders, usually it is not. Usually, it is more a learned sexual abusive behavior. So usually they are not high at the time they do it. I think that speaks to the need for treating the victims early.

The CHAIRMAN. How much longer do you think your specific project is needed?

Dr. SCHACHT. For some time. It is hard to say exactly how long. Again, I think we are still getting disclosures. There are still cases specific to Boone, but we are also getting about a 25-percent rate of abuse there. I think it could have been much higher if we weren't there. It still is an ongoing problem that needs some work.

The CHAIRMAN. Have you had a problem with repeat offenders?

Dr. SCHACHT. In a few cases. None of the ones that have gone through our offender treatment, but there have been a few cases of children who were treated as victims, who we later learned had offended against other children, after the treatment. Unfortunately, sometimes that happens.

The CHAIRMAN. Have you found there are some that just should be removed from the community?

Dr. SCHACHT. Of our juveniles, actually none of the Hopi offenders that I am aware of have been such repeaters that they can't be there. Maybe perhaps the ones that were, are now serving time in prison. The ones that are currently in treatment, that I am aware of, I think can be treated in the community. They are not hopeless.

The CHAIRMAN. When you first came to the community, I am sure you were viewed with some skepticism?

Dr. SCHACHT. I was fortunate, because a lot of the front work had been done before by the project staff, in terms of awareness of the problem. Even though I myself had to earn my credibility, I think the project had already earned some credibility in the community.

The CHAIRMAN. And now, obviously, you have more than adjusted to the community.

Dr. SCHACHT. Yes; I am very heartened by the support that our project does get from the council and from the community in general. There are people who are worried about the effect, when it is offenders who are in important positions, they are very worried about losing those people to the prison system. I think they are very encouraged by our offender treatment program, that it is possible to deal with this problem and not send away important people.

The CHAIRMAN. I want to thank you all for what you do. We are very grateful that we have people like you in our society. I think it is the obligation of this committee and the Congress to do everything we can to assist you. We will do that.

I thank you for coming today, and I appreciate your patience.

[Whereupon, at 4:25 p.m., the committee adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

Prepared Statement of Hon. Daniel K. Inouye, U.S. Senator from Hawaii, Vice Chairman, Committee on Indian Affairs

I commend Chairman McCain for his leadership in expediting the committee's consideration of the reauthorization of these two important legislative acts, the Native American Programs Act of 1974 and the Indian Child Protection and Family Violence Act.

As you are aware, the political changes in the House of Representatives require that both of these bills be reauthorized prior to the House acting on the Interior Appropriations Bill.

In 1974, the Congress enacted the Native American Programs Act with the stated purpose of promoting the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders [including American Samoan] and Alaska Natives.

Charged with the responsibility of implementing the act, the Administration for Native Americans [ANA] has successfully carried out the intent of the Congress as expressed in the Native American Programs Act of 1974.

Each year the Administration for Native Americans has provided direct financial assistance to Indian tribes and other Native American eligible organizations to promote social and economic development.

As a member of this committee, I have fully supported those past projects to which the Administration for Native Americans has provided support, including the National Indian Policy Center, the Native Hawaiian Revolving Loan Fund, the Native American Languages Grant Program, and the Mitigation of Environmental Damage on Indian Lands. And I will advocate for the continued support of these and other program initiatives.

In addition, I strongly support the reauthorization of the Indian Child Protection and Family Violence Act. This act holds the potential of providing critical support for the prevention and treatment of the many tragic incidents of child abuse and family violence in Indian country.

Again, I thank you Mr. Chairman for your leadership.

Prepared Statement of Gary Niles Kimble, Commissioner, Administration for Children and Families, Department of Health and Human Services

Chairman McCain, Senator Inouye and members of the Committee, it is my great pleasure to come before you today in support of the reauthorization of the Native Americans Programs Act, administered by the Administration for Native Americans [ANA]. There is a strong Administration commitment to address the critical issues that confront Tribes and Native American communities, as well as to help them achieve their social, economic and governance objectives through ANA financial assistance. I look forward to reporting grantee progress to this Committee so we can continue this important work.

The Administration for Native Americans is a small agency with a big mission, which we take very seriously. The impact of our philosophy and policies is visible and viable in Native American communities across the country, in Alaska, and the Pacific Islands.

ANA serves over 550 federally-recognized Tribes (including over 220 Alaska Native tribal governments), about 60 Tribes that are State-recognized or seeking Federal recognition, Indian and Alaska Native organizations, Native Hawaiian communities, and Native populations throughout the Pacific Basin.

The Administration for Native Americans' reauthorization will assist Native American communities and their citizens to carry out important infrastructure developmental steps toward social and economic self-sufficiency in several key ways.

We are proposing to reauthorize through fiscal year 1999 the Native American Social and Economic Development Strategies [SEDS] Grant Program. It will allow us to continue to support activities which cover a wide range of interrelated social and economic development efforts, including the expansion and creation of businesses and jobs in many areas and governance projects which include the development of new and existing Tribal constitutions and by-laws.

We also will continue to support community efforts to preserve their Native languages and meet their environmental enhancement responsibilities.

Finally, as shown in our fiscal year 1996 congressional justification, we plan to allocate $1 million of the fiscal year 1996 ANA appropriation for the Native Hawaiian Revolving Loan Fund [NHRLF]. The NHRLF promotes economic development activities for Native Hawaiians.

In order to provide the context for considering the reauthorization, I'd like to present our philosophy for working with Native American communities as well as a description of the progress they have made over the previous two years.

Our philosophy is to respect the right of self-determination and self-governance of all Tribes and Native American communities and organizations. Within this context, ANA assistance allows them to develop their own strategies so Native American communities can move their citizens towards self-sufficiency. We define a Native American community as self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

This approach which is embodied in the SEDS grant program, has moved many Tribal and Native programs from having Federal staff provide services to them, or operating federally-mandated programs, to developing and implementing their own discrete projects. Our policy recognizes the right of each individual Tribe and Native American group to move forward on its own terms, but more importantly to develop and achieve its own community infrastructure goals. SEDS was developed with formal Tribal and Native American leadership consultation. This is one example of how the government-to-government relationship is carried out in ANA.

Our policy is based on two fundamental principles:

(1) The local community and its leadership is responsible for determining its goals, setting priorities, and planning and implementing programs aimed at achieving those goals. Further, the local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic and social development and governance are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

In fiscal year 1994, ANA awarded 215 grants for governance, social and economic development projects. These grants include the expansion and creation of businesses and jobs; youth leadership and entrepreneurship projects; tourism enterprises; shopping centers; diversified agricultural projects; cultural centers; the first Native American tour business; fisheries; energy and natural resource management; and fish and wildlife preservation-a vital necessity to support the traditional lifestyle and economies of the Tribes.

I would like to describe some of the accomplishments of the Tribes and Native American communities using these SEDS grants.

Examples of innovative business enterprises developed through these grants include the Navajo Nation at Window Rock, Arizona, which has a Navajo Arts and Crafts Cooperative underway at Crownpoint. The Cooperative includes several small manufacturing shops operated by community members. In Scottsdale, Arizona, the Salt River Pima-Maricopa Indian Community has begun commercial development planning for 40 acres that surrounds a strategic freeway intersection that is under construction. The market in this location will generate Tribal jobs and income.

Nambe Pueblo in New Mexico, the only Native American owned and operated tour business in Santa Fe, offers unique insights through Pueblo Indian guides, educational experiences, traditional foods, storytelling, and access to Pueblo Indian culture, history, arts and lifestyle. In North Carolina, the Cumberland County Association for Indian People's Senior Citizen Day Care Center established a self-sustaining business called The Native American Scene providing interior and exterior designs, landscaping, and architectural consultant advice. Ke Kua'aina Hanuana Hou on the island of Molokati has a viable aquaculture project based on an edible seaweed called "long ogo"—Gracilaria parvispora. This enterprise has created jobs for several Native Hawaiian families, jobs not otherwise available on the island which has a very high unemployment rate.

ANA's attention to environment and natural resources is illustrated by The Point No Point Treaty Council in Washington state. This natural resources management consortium project is developing a Wildlife Management Plan that will be the blueprint for wildlife management for four member Tribes focussing on treaty hunting rights and settling disputes, a Tribal wildlife protection enforcement program, and Tribal participation in decisions which impact treaty-protected access to their hunting grounds. Another example, the Alaska Sea Otter Commission is a consortium formed by six Alaska Native regions to restore to Alaska Native Tribal groups, their traditional managerial authority over the sea otter—a vital resource for the traditional subsistence lifestyle and economy of coastal Alaska Natives. The ANA grant allows the Alaska Native groups to participate in the development of regional sea otter management plans to be incorporated into the cooperative Federal/State/Tribal management program.

ANA grants are working in the territories, too. In American Samoa, the American Samoan Government is reconstituting its archival records locally and nationally. The records will be catalogued into a data base and published in a guide. In the Northern Marianas, the Northern Marianas College Business Assistance Center provides new and existing Native businesses access to technical and business information, business education, and business counseling to assist indigenous Native Pacific Islanders to compete with foreign business in their own economy. In Guam, the historic village of Inarajan formed a non-profit corporation, the Gef Pa'go Inarajan Chamorro Cultural Village to address the submergence of the Chamorro culture by the tourist fueled economy based on U.S. administrative practices. The village as a living museum of Chamorro culture will provide the community members with an opportunity to earn a living through the practice of their traditional skills by opening the village to tourists.

ANA also assists Tribes with status clarification and Federal recognition. ANA has provided financial assistance to 21 Tribes whose status was clarified through two routes: 1) Federal recognition through the BIA Branch of Acknowledgement and Research process (the 25 CFR process); and 2) congressional action. During fiscal year 1994, with the assistance of ANA grants, three more Tribes have achieved Federal recognition. Currently 26 Tribes are conducting status clarification projects to reestablish their trust relationship with the United States.

In fiscal year 1994 ANA funded projects in two new competitive areas that address critical needs at the Tribal and village level.

Native Languages Preservation and Enhancement

Eighteen projects were funded for the survival and continuing vitality of Native American languages. They include research on current Native language use; development of specialized curricula; Native language training programs; language immersion camps for youth; and master (elder)/apprentice programs; transcribing or recording on audio and video tapes; oral narratives that will be used to develop or revise dictionaries and curricula, and incorporating a Tribe's language into Tribal Head Start programs.

Environmental Regulatory Enhancement

Tribes and Alaska village governments are operating 26 environmental regulatory enhancement projects that build professional staff capacity to monitor and enforce Tribal environmental programs; develop Tribal environmental statutes and establish community environmental quality standards; and conduct the research needed to identify sources of pollution and determine the impact on existing environmental quality. The projects also help Tribes and village governments to meet Federal environmental requirements.

Mitigating Environmental Impact of DOD Activities on Indian Lands

In fiscal year 1995, 19 grants were approved for the mitigation of serious damage to Indian lands due to Department of Defense activities. Briefly, the projects will address mitigating the damage to treaty-protected spawning habitats caused by ar-

tillery practice and damage caused to Tribal range and forest lands by gunnery range activities, low level flights over sacred sites and religious ceremonies, suspected leakage of underground storage tanks on lands taken from Indians for temporary war-time use by the Defense Department and unexploded ordnance from gunnery and bombing practice on Indian reservation lands that has resulted in significant damage to rangelands, wildlife habitats, and stock water wells. These grants are funded by a transfer of funds from the Department of Defense to ANA.

For the fiscal year 1995 funding cycle, ANA published a consolidated program announcement requesting applications under the three ANA competitive areas: 1) social and economic development; 2) environmental regulatory enhancement; and 3) Native American languages preservation and enhancement. Issuing this consolidated ANA program announcement at the beginning of the fiscal year supports comprehensive planning by our constituency. This approach also increased ANA's internal productivity.

We have made excellent progress in implementing the Native American Programs Act Amendments of 1992.

In April 1994, Secretary Shalala signed a Decision Memorandum that approved the Intra-Departmental Council on Native American Affairs Charter.

The Phase I report on focusing on a strategy for grant consolidation in the Administration for Children and Families will be submitted to Congress shortly.

Phase II of the Plan involves the design and implementation of a Tribal and Native American leader consultation process to ensure that the legislative recommendations regarding grant consolidation reflect Native American goals and needs. We are working with Tribal leaders now to establish this consultation process.

The Report to the Congress on the Social and Economic Conditions of Native Americans should be ready to submit to Congress in the spring.

I hope I have conveyed to you the vital role that ANA plays in implementing a "living" model of the government-to-government relationship with the Tribes and Alaska village governments to that helps them carry out their governmental responsibilities.

This translates into understanding the complex subtleties that must be taken into account in developing the program policies that affect Native Americans and ensuring there is consultation with them so we can do the best job possible. In ANA we can unequivocally state that this approach has proven to be the most effective way to ensure successful program results and Native American progress toward self-sufficiency. All Federal agencies have a trust responsibility and this is one way to honor this responsibility.

I look forward to working with this Committee to build upon ANA's support of Native American self-governance and economic development. I would be happy to answer any questions at this time.

PREPARED STATEMENT OF DAVID LESTER, EXECUTIVE DIRECTOR, COUNCIL OF RESOURCE TRIBES

Mr. Chairman, I am A. David Lester. For the last 12 years, I have had the pleasure to serve as the Executive Director of the Council of Energy Resource Tribes (CERT) and I am here today representing the CERT Board of Directors. I am also here as a former Administration for Native Americans Commissioner and one of the co-chairs for the Administration for Native Americans' (ANA) Ad Hoc Coalition—a coalition of Tribes, tribal organizations and other Native American communities who actively support the ANA program, its funding and reauthorization, and its long and successful track record supporting locally conceived social and economic development. The ANA Ad Hoc Coalition membership, and other co-chairs, include the National Congress of American Indians, the Council for Tribal Employment Rights, Native American Rights Fund, National Indian Gaming Association, National Tribal Environmental Council, American Indian Higher Education Consortium, Americans for Indian Opportunity, the National Center for Indian Enterprise Development, United South and Eastern Tribes and the All Indian Pueblo Council. This support and representation really speaks to the level of backing and success this program has in Indian Country. Almost all of these tribal organizations can attribute their genesis and long-running success to Tribes receiving ANA organizational seed funding. Nearly every new successful initiative in Indian Country has been, and continues to be, supported by ANA.

CERT is a national Tribal organization composed of fifty-four (54) federally-recognized Tribes from throughout the United States, representing nearly sixty (60) percent of all American Indians living on or near reservations. The CERT Board of Di-

rectors is made up of the elected leadership of each of the 54 Tribes that CERT serves. CERT member Tribes include those with substantial and potential energy resources as well as Tribes concerned about energy development, production, resource conservation, environmental protection and development of alternative energy technologies. CERT's mission is to support member Tribes as they develop their management capabilities and use their energy resources as the foundation for building stable, balanced self-governed economies.

The Council of Energy Resource Tribes was asked to comment on the Administration for Native Americans program. CERT, along with the other coalition members, is well aware of the new priorities of a new Congress and feels a need, as Native Americans and American citizens, to respond accordingly. The Congress has offered America a contract which promotes less government regulation and more localized control. In essence, it is offering self-governance. For decades, Indian Tribes have called for less government regulation, more effective government programs, and more local control. It is, as always, about time Americans have caught up with American Indians. The Contract with America may call for less government and streamlined government programs.

However, this new approach must not be confused with the programmatic approach taken with Indian programs. While the Contract with America's goals are parallel that of Indian Tribes, its tendency is to cut what Congress perceives as wasteful, duplicative or disposable. Reauthorization may be perceived as a luxury in other corridors but for Indian programs, reauthorization takes on a very different significance. Logic and history dictates that Indian programs have not been created out of the sheer generosity of the federal government. Most Indian programs were created in direct response to treaty requirements or the real trust obligation owed to Native Americans. These are not programs appropriately measured solely by success rates or bottom-lines. These are programs of real necessity.

The question becomes not of the perceived worth of these programs but the appropriate level of appropriations required to carry out the federal fiduciary obligation owed to their native constituency. The federal trust protection responsibilities; the political relationship between Indian nations and the United States characterized as Government-to-Government and the commitment of America to assist and support self-determined social and economic progress is also a solemn contract America has with the First Nations of this great land.

The Administration for Native Americans (ANA) was established by the Native Americans Programs Act of 1974. Its most recent reauthorization was in 1992 under P.L. 93–644, as amended, which additionally mandated that the ANA Commissioner was to be appointed by the President, by and with the advice and consent of the Senate, establishment in the Office of the Secretary the Intra-Departmental Council for Native American Affairs and the chairmanship of the Council by the ANA Commissioner to advise the Secretary on matters affecting Native Americans. Within the Administration is four competitive grant programs, including the Social and Economic Development Strategies (SEDS) program, the Indian Environmental Regulatory Enhancement program, the Native American Languages program and the ANA/Department of Defense program to mitigate environmental impacts on Indian lands caused by DOD activities.

The ANA programs in toto reflect a policy framework, like the overall successful approach to Indian programs, which is universal in nature but is expressed in localized terms. In ANA program terms, self-sufficiency is defined as an ability rather than an end state of being. This approach to projects, transcending a one-dimensional view of Tribal development priorities, works. It provides resources to Tribes to do for themselves what needs to be done. And therein lies the beauty of this process-oriented program—in the process of achieving a tribally-defined end goal, Tribes themselves gain the knowledge and valuable experience of follow-through. This knowledge is appreciated not only in terms of any value placed on learning but is appreciated in tangible terms by building tribal infrastructure. ANA is to be commended for historically, and continuing to, deferring to Tribes to define the agendas which suit them best, which may range from a tribal project establishing their own court system to active memberships in tribal coalitions addressing shared issues. This respect for Tribally-driven initiatives is rare and applauded by Tribes who have had specific, as well as shared, initiatives effectively solved or launched.

The appropriations history and future for ANA program support is telling and absolutely vital to the existence of effective tribally-relevant and successful projects that may not fall within the narrow scope of the Department of the Interior's Indian programs. The appropriations for ANA programs has been small in comparison to the return and leverage it provides to Tribes.

Fiscal Year 1995 Appropriations	$34.5 million SEDS programs $4.12 million Environmental Regulatory Programs $8 million DOD Interagency $1 million Native American Languages Program
Department of Health & Human Services (DHHS) Suggested Appropriations	$ Fiscal Year 1995 Levels
Fiscal Year 96 Administration for Native Americans Appropriations Recommendations	$52 million SEDS programs $8 million Environmental Regulatory Programs $8 million DOD Interagency $2 million Native American Languages Program

Social and Economic Development Strategies (SEDS) Program

The Social and Economic Development Strategies (SEDS) program was established to promote tribal capacity building and tribally determined, and designed, projects as mandated by P.L. 93–644. Clearly, this program provides the most flexible and effective federal tool available to Tribes for socioeconomic development. ANA funds projects to not only address local practical need but facilitate growth, measurable in real economic and political terms. In the end, projects usually achieve commendable programmatic goals: strengthening self-governance and leadership, strengthening tribal institutions that plan and implement local development strategies, promote social systems and institutions necessary for healthy, self-sufficient tribal communities and promote development of stable, diversified tribal economies. Left to the Tribes, ANA grants have been universally well-implemented and successful in creating the developmental balance Tribes have themselves utilized for centuries before contact and utilize now to govern appropriately, prosperously and wholistically.

ANA is the only federal agency that serves all Native Americans. ANA's constituency is a national and diverse one, including all federally recognized Tribes, Alaska Native villages, state-recognized Tribes, groups seeking Federal recognition, Indian/tribal organizations and groups, Native Hawaiians, Native Samoans and Native American Pacific Islanders (including the Commonwealth of the Mariana Islands and Palu). The results of this program, however, benefit Tribes and native groups individually. ANA programs, given this expansive constituency, require an appropriate level of program planning and attention owed a vitally important and integrated national native self-determination program. It is only at this level that a successful self-determination program can operate to serve best a geographically expansive constituency and do so effectively at a grassroots level. It is at this point that we understand the need, really the necessity, to view Indian programs, wherever they may reside, as an integrated approach. The goal—Tribes cultivating their own economies, having mastered the tools of modern technology, while balancing environmental and cultural concerns with economic growth.

The approach to development taking into consideration all its different and potential facets, however, is not new. It is that way because it has been proven to work when Tribes are leading the effort. It is an approach to tribal self-sufficiency that focuses on self-government, providing Tribes sufficient capital and technical advice to venture into charted and successful waters, providing Tribes the opportunity to do for themselves what they stand ready and able to do, providing Tribes the necessary technical expertise and training to either initiate or take over technical and regulatory programs for themselves, and providing Tribes the room to develop their own priorities, initiatives, economics, programs, resources, communities, projects and futures. ANA's approach is providing, competitively, financial assistance grants and/or interagency agreements which support locally determined projects.

For example, ANA's natural resource and environmental-related programs and economic development projects has provided funding to Tribes to both acquire and build technical and financial expertise to develop and manage their energy resources. Mineral income represents, by far, one of the largest source of income to Tribes. In 1992, the mineral royalty income on Indian lands was over $156.4 million dollars, representing an increase of over $34 million from 1989. With large reserves of undeveloped coal and natural gas resources remaining, Indian minerals are still a mainstay of economic growth for many Tribes. And considering increasing interest by Tribes to not only lease but manage, produce and market their own resources,

the proverbial iron is hot. In purely financial terms, these programs present the government with solid, productive investments. The results are Tribal projects which bolster both local control and local economies. And with the tribal taxation regime in its current state, mineral production is one of the very few lucrative tax opportunities for Tribes. If programs like ANA are dramatically decreased, the potential economic fallout will be swift and sure. Collapsed tribal economies would logically lead to mass urban migrations and increased welfare dependence—results nobody, especially the Tribes, wants.

Continued congressional assistance to Tribes to develop, protect and manage their own resources will result in tribal economics continually emerging and becoming more and more independent of continued annual appropriations. These economies will be based on strong local control and true tribal self-determination. ANA's integrated approach to development is a comprehensive strategy—linking development of resources, achieving and maintaining environmental equity, building governmental infrastructures and creating a strong economic base by emphasizing human and social along with economic development. However, a word of caution must be had as annual appropriations for Indian programs will never be completely unwarranted, only decreased to a level where tribal interests are still accounted for and the government's fiduciary obligation is discharged sufficiently. The legal obligation was designed to remain and was not conditioned in any way. CERT recommends this program not only be reauthorized but appropriations passed at higher levels which are completely justified by the ANA programs' tremendous success rate in Indian Country.

Intra-Departmental Council of Native American Affairs

The Council continues to be an exceedingly effective program in promoting successful coordination, cooperation, and complementary utilization of the DHHS' and other Federal agencies' resources for Indian Tribes. The Council has been visionary throughout its history in approach and leadership. The first director, Forest Gerard, not only provided this leadership but went on to be Director of the Senate Select Committee on Indian Affairs where he sheparded the passage of P.L. 93–638 and was then appointed Assistant Secretary of the Department of the Interior by President Carter. The Council was designed in its original authorizing language, was created to provide such leadership opportunity as well as the visibility of ANA, tribal initiatives, agency coordination and the Director who is to report directly to the Secretary of Health and Human Services.

Intra-agency coordination has resulted in tremendously successful projects. The anecdotal evidence is vast and persuasive. These initiatives translate and deal effectively, as well as practically, with localized tribal needs. The ANA Intra-Agency Program is one truly standout program which matches ANA grantees with ANA funds and outside agency funding. In the long and successful ANA intra-agency program history, the funding ANA provides is time and time again matched by other sources. The result provides Tribes twice as much funding to worthy projects. In addition, where ANA does not provide the governmental match, ANA grantees are able to leverage their ANA grant monies with other federal and/or private source funds on their own. In the end, and almost just important, these projects present an often rare opportunity to grantees to mobilize local economic and local resources and new partnerships, with states, with municipalities, with private industry. An important by-product is the intra-departmental policy and program coordination that results from this important ANA activity.

The inter/intra-agency program has provided support to such tribal initiatives such as the Intertribal Timber Council to assist tribes in completing independent assessments of Indian forest lands and Indian forest management practices as mandated by P.L. 101–630. Support has been provided to the Mni-Sose Missouri River Basin Intertribal Water Rights Coalition for development and technical assistance regarding water-related activities. Support has been provided to the American Indian Higher Education Consortium to provide tribal colleges funding to improve service and expertise. The Department of Commerce and ANA provided funding to aid Tribes in establishing a regional Northwest Indian Business Development Center for tribal enterprise support and coordination to northwest area Tribes. The Bureau of Indian Affairs and ANA has provided assistance to the Oglala Sioux Tribe for an alcohol and drug prevention initiative. The Indian Health Service and ANA provided funding to the Aberdeen Area Tribes in South Dakota for a project to reduce the incidence of fetal alcohol syndrome, fetal alcohol effects and infant mortality in that area. ANA, the Department of Defense and CERT teamed, as a special project as mandated by Section 8094, P.L. 103–139, to conduct workshops for Tribes regarding mitigation of environmental impacts on Indian lands resulting from Department of Defense activities. ANA and the BIA provided support to the American

Indian Higher Education Consortium so Tribal colleges could develop economic develop curriculum, scholarships, internships, summer camps, chapters for high school and colleges students. ANA, BIA and the Department of Transportation teamed to provide funding to Tribes to support organizational development of the Intertribal Transportation Association which will assist its membership in building capability to meet ISTEA requirements. These are but a few instances of the important and relevant work being accomplished with the support and coordination of ANA as well as other federal agencies.

Such programs and systems are essential to Tribes and Council of Energy Resource Tribes recommends added support of these Tribal initiatives. Tribes require more—more training, more planning opportunities, more well thought out mineral management programs that affect their day-to-day operations, more access to higher levels of technical advice and training. This current assistance can be effectively combined with other tribal-specific projects. For instance, Tribal initiatives in resource development and management have become a truly exciting area of economic development as Tribes are increasingly considering new and innovative ways to do business—co-venturing with industry and with other Tribes, creatively structuring and restructuring leases and contracts, establishing tribal production companies to take over their own resource development. And thereby creating more local jobs and increasing Tribal tax base. Some obvious benefits from these activities include the generation of badly needed jobs and income on reservations. For example, the royalty income from just three producing coal mines on the Navajo Nation brings in over $60,000,000 and over 1,800 Navajo employees earn more than S55,000,000 in wages from this tribal enterprise. These numbers should be all anyone needs to see the overall value of program activities in this area.

It is patently obvious that the federal government, while having considerable expertise in areas relevant to Tribes, cannot possibly have all the expertise required for the rapidly growing and expanding tribal agendas in relation to energy and resource development. Assistance in the form of providing funds to Tribes to build their own technical expertise and management systems would allow them to exercise technical as well as governmental control over the energy and resource development projects within their jurisdiction.

Tribal projects requiring detailed and complex technical training and management capability are expanding rapidly. For example, Tribes are seriously considering the need to regulate not only their own energy development but their own energy consumption, i.e., tribal utilities. Eleuricity regulation by Tribes is not just a concept. It is a reality. Much more, it is a necessity for Tribes who are paying outrageous utility bills for electricity generated from their own water and other energy resources. Tribes have been receiving and implementing technical advice to manage their oil and gas field operations more efficiently and increase revenues without increasing cost. Tribes have become adept, through training and assistance, at negotiating and renegotiating rights-of-ways resulting in increased revenues. These expansive and technically-complex tribal agendas are emerging and require support and technical advice to implement them at the local level.

Indian Environmental Regulatory Enhancement Program

The Indian Environmental Regulatory Enhancement Act of 1990, Public Law 102–139, was passed but no funds were made available for its implementation until fiscal year 1992. Since then, grants have gone out to Tribes to aid in environmental resource inventories, biological assessments, infrastructure impacts, groundwater sampling and testing, wellhead protection zones, soils and vegetation inventories, surface water sampling, testing and treatment, regulatory enforcement development, environmental health profiles, solid waste planning and management, hazardous waste inventories, transportation and management, clean air planning and management, fisheries protection strategies and marine environmental protection strategies. The need for this program was and remains high. Its goal is to build local tribal capability to regulate, administer and enforce compliance to minimum federal or higher environmental standards. This capability allows Tribes to more successfully utilize EPA and other fund sources, including their own, in order to implement their own environmental priorities. This program also aids in providing Tribes an opportunity to plan for their development and do so taking in consideration environmental requirements in order to ensure that their development is responsive to their legal as well as their community and cultural obligations.

Tribes and Native communities have their own solemn duty to approach development and change by taking into careful consideration the needs of their own constituencies to be protected, to be educated and trained, to be self-sufficient, to be in control of their own lands and collective futures. The programs that serve them must reflex these Tribal imperatives. ANA support of resource management are key

programs in the approach the government must take in fostering a system which makes it easier, and logical, for Tribes to control their own vast resource base and futures. These projects are ones which particularly fall under the public of federal trust responsibility because they so intricately affect the particular means by which Tribes have exercised some measure of control over their relationships with outside governments—by trade, by forfeit, by forced taking; and by which Tribes exercise control over their own futures—by development or by conservation of their natural resources. It is precisely this level of particularly complex control, in its most broad interpretation, that ANA support must continue to facilitate to aid Tribes in achieving well-balanced, self-sufficient, culturally relevant economies.

Tribes have stepped into the fore of environmental protection and regulatory fields. CERT Tribes have kept pace to not only provide leadership regarding specific media areas but multi-media policy. Tribal leadership, as the Council of Energy Resource Tribes, has provided technical and policy advice regarding the integration of multi-media programs as well as working with non-Tribal governments on transboundary environmental issues which as hazardous waste transportation, federal facilities regulatory compliance programs affecting Indian communities, nuclear and low-level radioactive waste management affecting surrounding tribal communities, land and property acquisition issues, remediation (especially bioremediation) technology development, and risk assessment forums.

CERT Tribes, and their organizational arm, has also been in the forefront of discussions regarding technology development, especially as it pertains to Tribes involved in remediation activities affecting Tribal lands and treaty interests. CERT Tribes have also been instrumental in discussions with federal departments, as well as special interests groups and other Tribes, regarding federal risk assessment policies and procedures as it pertains to Tribes—shedding some light on the governmental processes which often budget and decide about clean-up operations and assess the risk on nearby populations, often Indian. These risk assessments have often been the tool by which governments have decided to allow on-going high risk activities to go on near or on Indian reservations because of perceived, and analyzed, risk rates based on population density. Rather than seeing the risk to a whole Nation of native people.

Changes in mineral development, mining and environmental laws and regulations are areas which require analysis but also tribal and industry outreach. Changes are refueling interest in Indian minerals. These inherently and rapidly changing areas of technology and regulation are areas that require ongoing attention, especially in relation to Tribal and federal interests. While the projects and required technical advice may be specific in nature, the critical need to work with all the affected governments is dear. The regulation may be local but the transboundary nature of resource production and marketing as well as environmental regulation, and coordination, on a very real level, is national and intertribal. Much more needs to be done and so much more organized tribal leadership is required to keep up with a field of energy development that is anything but static. Additional appropriations is not only advisable but absolutely required.

Native American Language Program

The Native American Language Program was mandated by P.L. 102–524 by the Native American Languages Act of 1992 and has been, and continues to be, strongly supported by Tribes. The intention is to assist Tribes in projects to retain native languages, many of which has been fading or are on the verge of extinction. Language is clearly the means by which Tribes have been able to maintain their culture and strengthen their communities. When a native community is able to take pride in their continued cultural uniqueness, and translate that pride to successive generations in their own terms, that pride and community can only lead to healthier and productive futures on micro- as well as macrolevels. Last year's funding was a positive beginning. Funding went towards many deserving and innovative tribal projects to preserve native language. Funding was awarded and often obligated as multi-year grants. So it becomes readily apparent that additional funding is essential to fund the countless new projects to preserve language and culture. We recommend that appropriations be increased to $2 million to continue funding worthy projects as well provide the same opportunity to new tribal projects.

PREPARED STATEMENT OF CRAIG VANDERWAGEN, M.D., DIRECTOR, DIVISION OF CLINICAL AND PREVENTIVE SERVICES, OFFICE OF HEALTH PROGRAMS, INDIAN HEALTH SERVICE

Mr. Chairman and Members of the Committee: I am Dr. Craig Vanderwagen, Director of the Division of Clinical and Preventive Services, Office of Health Programs, Indian Health Service (IHS). Accompanying me today is Dr. Scott Nelson, Chief of the Mental Health and Social Service (MM/SS). Dr. Michael Trujillo, the Director of the IHS, regrets that he cannot be here personally to address this important topic. However, he is attending a regional Indian health in Portland, Oregon with the Assistant Secretary for Health, the Department of Health and Human Services. This meeting had been scheduled several months ago. He wants to assure you that he continues to place the highest priority on efforts to combat child abuse and family violence because of the terrible toll these problems take on people in Indian Communities. For the past two years our MH/SS program has taken the lead responsibility for child abuse prevention and treatment activities in the Indian Health Service. I appreciate the opportunity to present the IHS comments and to support your legislation to reauthorize Title IV of P.L. 101–630, The Indian Child Protection and Family Violence Prevention Act.

IHS supports the reauthorization Of this important child abuse legislation as proposed in S. 441. We believe that the authorizations under the legislation provide the opportunity for needed funding for tribal treatment and prevention programs. The legislation also preserves appropriate roles for IHS and the Bureau of Indian Affairs (BIA) in the implementation of child abuse prevention programs.

As Dr. Trujillo testified in May of 1994 before this Committee, IHS has established a number of initiatives in child abuse/family violence prevention and treatment with the $125 million in resources that have so far been provided. We have also actively pursued additional resources from the agencies resulting in $575,000 from BIA and the National Center on Child Abuse and Neglect (NCCAN) in the 1994–95 fiscal years to fund joint child abuse prevention and education projects in Indian country. Major IHS activities related to child abuse prevention and treatment are currently underway. Some of these activities include:

- Funding of tribally-operated child abuse treatment and/or prevention programs at Navajo ($300,000 per year), Hopi ($200,000 per year), Bay Mills ($100,000 per year), Fort Peck ($200,000 per year for a 3 year demonstration prevention project), and Washoe ($150,000 in fiscal year 1993).
- Support of a joint IHS–BIA national family preservation child protection/family violence prevention conference to be held in April 12–14, 1995 in Phoenix under the auspices of the Intertribal Council of Arizona. IHS and BIA grantees and tribal leaders will discuss strategies for preserving families and preventing and treating child abuse that have been found to be effective.
- Initiating a program to treat juvenile sexual perpetrators in 8 Indian communities.
- Hiring of a national medical consultant to plan and participate in training of physicians and others in conducting examinations of child abuse victims, and a social worker to coordinate IHS and interagency child abuse activities.
- Extensive coordination with BIA, NCCAN, the Department of Justice, the Substance Abuse and Mental Health Services Administration and the Federal Interagency Task Force on Child Abuse, as well as with relevant other IHS programs.

Senator McCain and members of the Committee, we appreciate your personal commitment to this important issue of child abuse. Dr. Trujillo and IHS staff are similarly committed to working with you, the Committee and tribal leaders in combating child abuse and treating child abuse victims in Indian country. Dr. Nelson and I will be glad to answer any questions that the Committee may have.

PREPARED STATEMENT OF DR. ANITA SCHACHT, DIRECTOR OF THE HOPI CHILD SEXUAL ABUSE PROJECT

Thank you for your attention to the reauthorization of the Indian Child Protection and Family Violence Prevention Act, and for the opportunity to speak with you. I am Dr. Anita Schacht, Director of the Hopi Child Sexual Abuse Project. As the Director of the Hopi Child Sexual Abuse Project for more than three years, I am well aware of the great importance of this Act to the welfare and safety of children and families on Indian reservations across this country. Prior to its passage in 1990, children on Indian reservations had little or no protection from abuse by non–Indians. Perhaps as a result of this vulnerability, we became painfully aware of several

abuses of this power by several non–Indians who molested hundreds of Indian children.

This law took the crucial step of establishing the legal framework for the reporting, investigation and prosecution of child abuse on Indian reservations. By establishing reporting procedures and mandates, confidentiality of informant guidelines, means of exchange of information, waiver of parental consent, and character investigation requirements for individuals working on reservations, it has established the basic guidelines for the protection of Indian children. It is essential that this law be reauthorized to keep these vital protective measures in place. Without this law, Indian children would again be highly vulnerable to significant abuse.

Other key portions of this law have not yet been implemented, but remain greatly needed. The Indian Child Abuse Treatment Grant Program is much needed to address high rates of child abuse on reservations across the country. The Hopi Child Sexual Abuse Project, through earmarked funding, has been able to provide treatment to more than 350 sexually abused and abusive children and their families over the past 8 years. This has greatly reduced the trauma of the abuse to the children, families and communities, and helped prevent an epidemic of abuse on the Hopi Reservation. Such programs are needed on other reservations as well, and could be provided if this law is reauthorized and funds allocated for this need.

The Indian Child Resources and Family Services Centers authorized by this law would also greatly aid reservations in preventing, investigating and treating child abuse and neglect and family violence. Since so many reservations are isolated from and unable to afford the necessary technical assistance in developing an adequate response to these issues, these centers would be very useful. Preventing and stopping child abuse, neglect and violence requires adequate responses on many different systems levels, which must also be coordinated. This Act would make possible the appropriations to fund such centers, which could greatly improve the response to these problems on all these levels. Similarly, the Indian Child Protection and Family Violence Prevention Program portion of the Act could make possible the employment and training of staff to investigate and prosecute cases of child abuse and neglect, the funding of shelters for victims of family violence, the development of prevention and education programs, and the implementation of multidisciplinary child abuse investigation and prosecution programs.

With prevention funds earmarked for the Hopi Project, we have been able to provide abuse education and prevention to thousands of Hopi children and families over the last 8 years. This has helped children and parents to understand and report incidents of abuse, to stop it before further harm is done. I understand that funds for prevention and education of child abuse will no longer be available to the Hopi Project after September of this year. If this portion of the Act is funded, Hopi and other reservations across the country would have better access to the resources necessary for these essential protection and prevention programs.

In my work with the Hopi Project, I am repeatedly impressed by the needs for training, funding and personnel on many levels of the legal system, which are beyond the scope of our prevention and treatment program. Other tribes have even fewer resources on all levels to address these issues. Adequate resources and training are necessary in order to prevent and treat the problems of child abuse and family violence. As you know, when these problems are left unaddressed and untreated, they can multiply, as some children who are victims or witnesses of abuse and violence, go on to be abusive toward others. Other victims may resort to alcohol, drugs, suicide, and other behaviors harmful to themselves and others.

I am aware that the implementation of some portions of this Act has been painfully slow. Adequate background check procedures are just recently becoming better implemented in federal and tribal agencies. Multidisciplinary teams take time to become effectively organized and implemented. An appropriate formula or mechanism for funding of tribes is apparently still being developed. It has been difficult for the Bureau of Indians Affairs and Indian Health Service, as well as the tribes, to coordinate as needed under this law. And major portions have still not been funded. As I have discussed in the past, some revisions of the Act might make it more functional. These delays and failures of implementation are frustrating and costly to Indian children and Tribes. But they do not undermine the great need for reauthorization of this act.

I, therefore, strongly urge you to reauthorize this Act. It is essential for the safety and well-being of Indian children and families. I also urge you to support allocation of funds to adequately implement this important legislation.

Thank you for your concern and attention to these important matters.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY,
Scottsdale, AZ, March 20, 1995.

Hon. JOHN MCCAIN,
U.S. Senate,
Washington, DC.

Dear Senator McCain: The Salt River Pima-Maricopa Indian Community (SRPMIC) has sought to maintain government-to-government relationships with the United States and with the Departments of the Executive Branch of the United States. The United States Department of Justice is recommended for the establishment of the Office of Justice which establishment recognizes the government-to-government relationship between the United States and Indian tribes.

The United States Department of Justice, Office of Tribal Justice, has proposed that the Congress enact an appropriation which would allow for the direct funding to Indian tribal governments for the design, development and construction of prisons and other detention facilities in Indian country to be maintained as a part of tribal justice systems. SRPMIC supports this proposal of the Office of Tribal Justice, and that the Congress enact an appropriation which would provide for the direct funding to tribes of prisons as a part of individual tribal justice systems.

SRPMIC has been engaged in a multi-year effort of planning and design for a detention facility within the Salt River Indian Community through the United States Department of the Interior, Bureau of Indian Affairs Facilities Management and Construction Center. The SRPMIC detention facility construction project has been deleted from the FY 1996 budget proposed by the Bureau of Indian Affairs.

The SRPMIC requests that funding for the completion of the design and construction of the Salt River detention facility be made directly to the Salt River Pima-Maricopa Indian Community. Our jail is small and overcrowded with unsanitary and unsafe conditions which needs to be corrected immediately. Funding of this project directly to the SRPMIC would allow the Community to complete construction through its tribal justice system in a timely manner. Thank you for your continued support of tribal self sufficiency and self governance.

Sincerely,

IVAN MAKIL, *President.*

PREPARED STATEMENT OF THE OFFICE OF HAWAIIAN AFFAIRS

The Office of Hawaiian Affairs (OHA) strongly supports the reauthorization of the Administration for Native Americans (ANA). ANA is the single most effective source of funding for native communities to realize their own economic future through ANA's funding support for the Native Hawaiian Revolving Loan Fund (NHRLF) over 200 Hawaiian entrepreneurs have had the opportunity to own and operate their own business.

Loans made through the NHRLF cover a wide spectrum within a traditionally narrowly focused state economy. These include agriculture, commercial fishing, food service, trucking, automotive repair, retail, professional services and other business.

In the remote fishing village of Milolii on the island of Hawai'i, there is now a small general store selling refrigerated items never before available to its predominantly Hawaiian residents With no electricity in the village, Mr. Willie Kaupiko took out a loan to purchase solar panels, converters and batteries Mr. Kaupiko and four other members of his family are now able to sell fresh meat, poultry and vegetables and supply ice to the other fishermen in Milolii.

In 1992, the island of Kaua'i was devastated by Hurricane Iniki. While the effects of this hurricane are still being felt, two of our NHRLF, loan recipients have managed to create opportunity from tragedy.

Mr. Frank Santos and his wife Abbey started a plant rental business soon after his return from serving with the Army in Vietnam. On his first attempt to secure a loan from the NHRLF, Mr. Santos was encouraged to obtain a landscape contractors license. Upon applying again, with his license in hand, Mr. Santos secured the financing to purchase the equipment he would need to compete for large landscape contracts on the island of Kaua'i.

After his business was completely destroyed by the hurricane, Frank and his family worked hard to rebuild and restock their nursery. The widespread devastation caused by the hurricane created an enormous demand for landscape reconstruction of the many resort properties on the island.

Frank Santos now employs 17 people at his business which is located in a small rural community. His success in business and his many contributions to the commu-

nity helped contribute to Frank's selection in 1993 as the SBA Small Business Person of the Year for the Island of Kaua'i.

The effect of the hurricane created another unique opportunity for two Hawaiian entrepreneurs on Kauati. After generations of cultivating taro in the community of Makaweli, members of the Aana and Char families seized the chance to start their own processing mill, after the only mill in West Kauati was destroyed in the hurricane. The owners decided not to rebuild. Rather than sell their equipment to anyone, it was first offered to the families that had faithfully been supplying the raw taro for so long.

John Aana and Rawlins Char received a loan from the NHRLF to purchase the equipment needed to reopen the poi mill and supply the island with poi. Poi is a highly valued staple of the Hawaiian diet and culture. With ten (10) employees, the mill now ships its product to Honolulu and the island of Hawai'i.

On the island of O'ahu, Lei Bright, a single parent with three children made ends meet only with the help of public assistance payments. To supplement her income she began teaching gymnastics to a few children in her home. With enrollment increasing she decided to move her operation into a warehouse.

Despite the poor location of her school, enrollment continued to increase. With constant encouragement from the parents of her students, Lei Bright applied for a loan from the NHRLF in order to move into a newer, cleaner building. This move enabled Lei to become economically self-sufficient. She has since married, sold the business and repaid her loan in full.

These success stories illustrate the positive results of extending credit to highly motivated, yet collateral-poor entrepreneurs. They represent many different backgrounds and visions for success. What they have in common is a strong motivation and commitment to take a chance as a business owner. The NHRLF merely provides the missing ingredient that has helped Hawaiians realize their dreams.

The Administration for Native Americans (ANA) selected the Office of Hawaiian Affairs (OHA), an agency of the State of Hawaii, as the Administrator of the Native Hawaiian Revolving Loan Fund (NHRLF) in 1988. The NHRLF was initially capitalized with $3 million from ANA and opened for business in January 1989. The first group of loans was approved on June 7, 1989. In addition to matching ANA's investment, OHA has committed $631,000 annually to operate the NHRLF. These funds are used for program operating expenses and for critical management and technical assistance to Native Hawaiian entrepreneurs statewide. This leaves all of the federal funds available for business loans.

ANA renewed the program in 1992 for three more years and provided an additional $1 million for each year of the extension. In 1992, the OHA Board of Trustees also began to match, dollar for dollar, the loan principal provided by ANA during the three year extension period. The OHA commitment was predicated on the success of the program and the unanticipated high loan demand by Hawaiian entrepreneurs.

The sources of financing for Native Hawaiian entrepreneurs continue to be very limited, primarily local banks and the U.S. Small Business Administration. In practice, Hawaii banks are extremely conservative, especially in response to new or start-up financing requests. Nearly 70 percent of the NHRLF recipients are startup businesses.

Veribanc, Inc., a Massachusetts company that tracks the U.S. banking industry, reported that from 1993–94 Hawai'i banks had one of the slowest rates of loan growth in the industry. Out of 50 states, Hawai'i was ranked 42nd, with a loan growth rate of 3.8% from 1993 to 1994. In contrast, the highest increase in loan growth was 13.8% in Tennessee during the same time period.

With little competition until recently, Hawai'i banks have also had a non-competitive banking advantage as out-of-state banks are prohibited from opening branches here. Hawai'i has seven banks providing commercial financing for small businesses compared to 364 in California. Only within the past year has an out-of-state bank, Bank of America, begun to do business in Hawai'i. This was made possible by their acquisition of a local savings and loan firm. The entry of Bank of America did not increase the number of banks in Hawai'i, however, it merely replaced a local bank with a bank headquartered in California.

The U.S. Small Business Administration provides an alternative source of financing, but, budget constraints have reduced their direct lending program to $4.9 million nationwide. Direct lending is limited to individuals with physical disabilities. Funds for these loans have already been committed and applications are no longer being accepted. To further exacerbate the limited supply of SBA financing, its proposed budget for 1996 does not include any direct loan funds.

The majority of SBA financing assistance is through its 7(a) loan guaranty program. In this program, a bank requests a guaranty for loans which present a degree

of risk than the institution is comfortable with. The typical NHRLF applicant is not considered for this program because of the start-up nature of their business and/or other factors which classify their loans as "high risk."

The conservative lending practices of Hawai'i banks, non-competitive banking climate, geographical restrictions and limited alternative financing sources have all contributed to limiting access to capital for Native Hawaiians. A lack of collateral, assets, or a secondary source of repayment also represent a significant barrier to obtaining business financing for Native Hawaiians.

Banks and the SBA prefer to lend to borrowers with a profitable operating history and able to provide tangible collateral as a source for secondary repayment, such as real property which is secured with a mortgage.

The U.S. Bureau of the Census, 1990 Census of Housing, reports that Native Hawaiians own only 10% of the housing units in Hawai'i. However, many of these home owners reside on Hawaiian Home Lands, which is federally-established trust land. This prevents conventional lenders from securing a business loan with a mortgage on the property. Native Hawaiian-owned properties also have the lowest mean and median value compared to all other ethnic groups in Hawai'i.

The NHRLF does not require a secondary source of repayment, or tangible collateral. Where possible alternative forms of security are explored and attached as collateral to the loan. Primarily because of its flexibility, the NHRLF has attracted over $76 million in loan requests. The strong desire for business ownership and economic self-sufficiency fuels a flow of applications, which consistently average over $1million in new requests each month.

Since the inception of the program, the NHRLF businesses have created 720 new jobs in Hawai'i. This has occurred during a very poor economic climate in which very few new jobs in number or variety have been created. The existence of the NHRLF has therefore, served to diversify our state's economy as well as provide much needed employment opportunities. Approximately 50 percent of the loan recipients are located in rural areas where the unemployment rate often tops 7 percent as compared to the national average of 5.4 percent.

The following statistics provided a profile of loan activity as of February 28, 1995:

Total Inquiries	9,394
Total Completed Loan Applications	1,467
Dollars Submitted for Decision Making	$76,646,316
Total Loans Approved	256
Total Loan Amount Approved	$10,377,421
Total Loans Disbursed	212
Dollar Amount Disbursed	$9,377,421
Jobs Created	720
Number of Loans Paid in Full	29
Dollar Amount of Loans Paid in Full	$1,019,691

In 1994, the NHRLF recorded no bankruptcies as compared to a 6.4% increase in bankruptcies in the State of Hawaii. Given the fact that the NHRLF is truly the lender of last resort, we believe the program represents a very successful model for fostering business creation among Native American communities. Less than 20% of the NHRLF portfolio is classified as delinquent (over 30 days past due). Although many of NHRLF borrowers experience payment difficulties at one time or another, only 5.5% of the original portfolio has been written off as uncollectible. These losses are charged off against the interest earned by the program leaving all original loan principal intact. The Office of Hawaiian Affairs absorbs the cost of collection efforts and normally goes to extreme lengths to work with borrowers to solve business problems, restructure payments, and get the businesses back on track.

As the NHRLF enters its sixth year of operation, OHA, with continued assistance from ANA, seeks to expand the program in an effort to meet higher demand for loans. ANA funding is critical in leveraging OHA's matching funds due to legal restrictions which limit the use of OHA's trust funds to Native Hawaiians with 50% or more blood quantum. When blended with matching federal dollars, loans may be extended to Native Hawaiians regardless of blood quantum. This segment of our Hawaiian population with less than 50% Hawaiian blood is by far the larger.

To assist us with planned program expansion efforts, OHA would like to request that two amendments be made in the language of this reauthorization bill.

We would like to request that the method for calculating interest charged to the borrower be amended from its current 2% below the six-month Treasury bill rate to "a rate no greater than the prime rate plus 2 3/4 at the time the loan is approved".

The other request is to amend the maximum term of the loan from its current five years to not to exceed eight years.

These two amendments will help the NHRLF reach more borrowers and build a more self-sufficient program. The current interest rate floats with the Treasury bill. T-bills rates have declined steadily since the inception of the program, this has resulted in a large volume of loans being made at extremely low rates. Nearly $3.1 million has been lent at rates below 2%. In effect this has created an unrealistic borrowing environment, which does not facilitate the transition of our borrowers to the conventional lending institutions for subsequent credit needs.

The second effect of the current method of calculating the interest rates has been a dramatic decline in the interest earned by the program. Interest income is a critical element of any loan fund in that it serves to protect the corpus of loan principal from anticipated loan losses. It also helps to grow the fund and can be re-lent to new borrowers.

A final consideration in setting the interest rate is in the incentive it creates for bank participation and co-lending. With interest rates at such a low level, the NHRLF has been unable to ensure consistent bank participation in the program. We are confident that the proposed rate, while still below market, will allow us to secure more active participation from local banks.

The second amendment we would like to request is that the maximum term of loans be raised from its current five years to eight years. This amendment will complement a needed increase in interest rates by maintaining monthly payments from borrowers at or even below payments resulting from current terms. The resulting

amendments would have a positive effect on the cash flow of our borrowers and subsequently increase their long term stability.

To conclude, the Office of Hawaiian Affairs strongly supports the reauthorization of the Native American Programs Act and the Native Hawaiian Revolving Loan Fund. The NHRLF provides the only hope for Native Hawaiians to overcome substantial obstacles to business ownership. Without the necessary personal and family assets to draw on and a lack of an historical presence in the ranks of business ownership, the chances of securing commercial credit remain remote. Despite being considered "high risk," Native Hawaiians have proven that a program such as the Native Hawaiian Revolving Loan Fund plays a critical role in given the entreprencur a once-in-a-lifetime opportunity at successful business ownership.

We ask for your assistance in allowing this program to continue to offer that hope.

STATEMENT OF ADA E. DEER, ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, AT THE HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, ON S. 441, A BILL "TO REAUTHORIZE APPROPRIATIONS FOR CERTAIN PROGRAMS UNDER THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT, AND FOR OTHER PURPOSES."

March 22, 1995

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here to support the enactment of S. 441, the reauthorization of the Indian Child Protection and Family Violence Prevention Act (Act), within existing funding constraints. I have with me today Ms. Joann Sebastian Morris, Acting Director of the Office of Tribal Services, and Mr. Theodore Quasula, Chief of the Division of Law Enforcement. They will assist me in responding to any technical questions the Committee may have.

Earlier this month we presented testimony which detailed the dramatic increase in reporting of child abuse in Indian country. The rate of increase is so significant, it bears repeating.

In 1993 the BIA Social Services received 31,901 child abuse complaints, an increase of 445% from the statistics brought to this Committee during its 1987 child abuse hearings. In 1994, the number of complaints dropped to 25,919; however, we believe this reduction is due to a decrease in the number of tribes reporting to the BIA, not to a decrease in incidents.

Last year, BIA Criminal Investigators conducted 442 investigations of cases in which children were victims, including sexual contact, incest, sexual abuse, physical abuse, and felony sexual molestation. BIA Social Services received notice that State courts, adjudicating the interests of off-reservation Indian children, granted 46 adoptions, terminated the rights of 50 Indian parents, and issued 155 notices of abuse and neglect.

I would first like to review activities undertaken by the BIA to implement the Indian Child Protection and Family Violence Prevention Act. Greater detail is provided in our 1995 Child Abuse and Family Violence Prevention Plan which was submitted to the Committee March 3.

This year we plan to publish **Proposed regulations** establishing Minimum Standards of Character and Program Guidelines for Tribal Child Protection and Family Violence Programs and Distribution of Funds Formula. Tribal review of draft regulations and consultation was conducted August 30, 1994, in Oklahoma City, following which the minimum standards of character and the funding formula were redesigned, by tribal and BIA personnel. The Solicitor's staff completed its first review of the regulations and plans to complete final revisions this month. It is our plan that the regulations will undergo simultaneous review within BIA and the Department; in addition, BIA staff hopes to solicit comments on the draft proposed regulations from the participants at the National Indian Family Preservation Conference in Phoenix, April 12. Following the required OMB clearance, the proposed regulations will be published with a 60 day public comment period.

Currently, BIA **background investigations** are processed through the Office of Personnel Management. BIA's program to protect children includes investigating the background of its own employees who have regular contact with, or control over, Indian children, and assisting tribes in conducting background investigations on applicants for employment in these types of positions. Eight security officers adjudicate applicants for and employees in 7,000 sensitive positions within BIA Office of Indian Education Programs, Social Services, and Law Enforcement. All persons in positions with regular access to children are identified by position title, name, social security number, date of birth, entry date, and duty station; and are scheduled for reinvestigation every five years.

As one check on the background of applicants, tribes may request FBI criminal history records. While some tribes have been successful in accessing state and FBI criminal history records, many tribes still have problems. Consequently, criminal history checks are not routinely conducted and many tribes have requested the BIA provide this service. The FBI has requested that BIA process tribal requests as we did for gaming tribes before the National Indian Gaming Commission assumed the responsibility. We have been working with the FBI and will be negotiating an agreement to assure that tribes, through the BIA, will have access to FBI fingerprint criminal history records. Additional staff will be required to process tribal inquiries and the cost will be borne by the BIA. Contract and grants funding may be utilized by the tribes to pay the $22 charge for each inquiry.

Our proposed regulations make clear the continuing responsibility of tribes. Specifically, we are emphasizing to tribes that criminal history records checks are only a small part of an overall background check, and simply because a criminal history record does not exist for an applicant it does not mean there have been no incidents of inappropriate prior conduct. Tribal hiring officials must ensure that a comprehensive review of former employment records, personal references, residences, local law enforcement records, education records, and personal interviews are conducted.

The **feasibility study for a central registry** on child abuse in Indian country was completed in October, 1994. The study recommended the establishment of a central registry to provide more complete data on child abuse in Indian country and to track convicted perpetrators. BIA is exploring the costs, benefits, and feasibility issues raised by this recommendation. We are also considering the possibility of collaboration with the National Center for Child Abuse and Neglect of the Department of Health and Human Services. Replication of existing and new programs, as well as cost, are critical factors in our review.

BIA and Indian Health Services (IHS) collaboration has been continuous and quite productive. As indicated in our Plan, we are refining our memoranda of agreement and understanding to provide services to children and their families, and are developing new cooperative initiatives. For example, the BIA and IHS jointly funded the Cherokee Nation Child Abuse Prevention Project; and with the Intertribal Council of Arizona, are co-sponsoring the first National Indian Family Preservation Conference in April 1995.

BIA and IHS staff coordinate an inter-agency National Child Protection Team, and area and agency level inter-disciplinary Child Protection Teams, many of which now include United States Attorneys and representatives from State social services agencies. The BIA and IHS meet quarterly as the National Indian Child Protection Team, and participate in the Interagency Indian Children's Mental Health Council.

BIA and IHS are developing residential treatment programs at juvenile detention centers, and IHS is assisting the BIA and tribes in implementing therapeutic and wellness models at one grant school and one BIA off-reservation residential school. IHS participates in BIA's Indian Police Academy training programs, particularly the regional multi-disciplinary training program with the United States Attorneys, on the identification, investigation, and prosecution of child abuse and domestic violence.

Both BIA and IHS utilize *Linkages*, a publication of BIA Social Services, and *Prevention Quarterly*, a publication of BIA Office of Alcohol and Substance Abuse Prevention (with total subscriptions of 5,000) to address issues of concern to tribes and disseminate information.

Indian child protection and family violence prevention program funds have been requested in the President's 1996 BIA Budget and will be equitably distributed to American Indian and Alaska Native communities to develop prevention and treatment,

multidisciplinary child abuse investigation and prosecution, tribal codes, training, or community education programs.

Priority has been given to the funding and developing of tribal rather than BIA programs. Special child abuse initiative funds were incrementally appropriated during fiscal years 1989-1991 for critical child protection and staffing needs in the field. In response to tribal recommendations, these funds, totalling $7.6 million, have been added to the tribe/agency tribal priority allocation budget system and are subject to tribal priority setting.

We have also encountered **programmatic barriers** to the implementation of the Indian Child Protection and Family Violence Prevention Act.

We have received reports that tribal and federal personnel have suffered retaliation, including job loss, as a result of good faith reporting of child abuse. BIA regulations will be revised to require compliance with 18 USC §§ 1512 and 1513, but we recommend as well that the reauthorization of the Act include a prohibition against retaliation following good faith reporting of child abuse.

Vacancies in both the Office of the Child Protection Coordinator and Office of Alcohol and Substance Abuse Prevention have slowed collaborative efforts and new initiatives in recent months. Directors for each important coordination office are being recruited, and selection of the Child Protection Coordinator will take place shortly.

The $5 million is included in the President's FY 1996 BIA Budget to begin meaningful program development by tribes, including comprehensive child abuse and family violence prevention programs. As a starting point, tribes will be able to enhance existing programs with the FY 1996 funds with the option of redirecting funds from other

available tribal resources.

We must realize that abuse is a symptom of increasing stress within both families and communities. As stress factors increase, so will violence whether it is self-inflicted or focused at others.

Recent legislative initiatives threaten already diminished resources that sustain many Indian families, such as WIC, AFDC, Food Stamps and the Commodity Supplemental Food Program. If these and similar tribal programs that are essential to tribes are eliminated, BIA and local providers cannot possibly fill the void: In essence there will be no safety net for Indian children and their families.

The impact of current proposed legislation is far reaching. It is likely that the BIA will experience an increase in the number of American Indian and Alaska Native children adjudicated as abused and neglected. Such cuts would seriously hinder the ability of tribes and villages to develop comprehensive, multi-disciplinary programs to meet the needs of Indian children and their families.

We applaud Senator McCain for his proposed reauthorization of the Indian Child Protection and Family Violence Prevention Act. It serves as a symbol for the focused attention we intend to give to these issues. And, with funding authorized to tribes to support the development of local level programs and solutions, we hope to see a reduction in the statistics we shared in the opening of our testimony. The BIA will do all it can to partner with tribes and our colleagues in the Indian Health Services and other agencies to work toward that goal.

This concludes my prepared statement. I and my staff will be pleased to answer questions the Committee may have.

(4310-01)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 63

RIN: 1076-AC 97

Indian Child Protection and Family Violence Prevention Programs

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Proposed Rule

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to establish regulations as mandated by the Indian Child Protection and Family Violence Prevention Act that prescribe minimum standards of character for employees whose duties and responsibilities allow them regular contact with or control over Indian children, and establish the method for distribution of funds appropriated for Indian Child Protection and Family Violence Prevention Programs.

DATES: Comments must be received on or before (insert date 60 days after date of publication in the Federal Register).

ADDRESSES: Mail comments to the Child Protection Coordinator, Department of the Interior, Bureau of Indian Affairs, 1849 C St. NW, Mail Stop 4603-MIB, Washington, DC 20240; OR, hand delivered to Room 4603 at the above address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Tribal Services, at telephone (202) 208-3463.

SUPPLEMENTARY INFORMATION:

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the location identified in the "addresses" section of this document.

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. BIA has made every effort to ensure that the proposed rules specify their effect on existing regulations, and provide clear, concise language to reduce public burden and avoid litigation.

The Department of the Interior has determined that this rule is a significant regulatory action under Executive Order 12866, and therefore will be reviewed by the Office of Management and Budget.

Depending upon the number of positions for which determinations of suitability for employment are required, the cost of background investigations ($22 to $72 each) may have a significant economic effect on a substantial number of tribal governments and tribal organizations under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and require additional outlays by tribal governments, tribal organizations, and the Federal Government.

In accordance with Executive Order 12630, the Department has determined that this rule does not have "significant takings" implications. The rules do not pertain to "taking" of private property interests, nor do they impact private property.

The Department of the Interior has determined that this rule does not have significant federalism effects under Executive Order 12612 and will not interfere with the roles, rights and responsibilities of states.

The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

The information collection requirements contained in 25 CFR part 63 have been approved by the Office of Management and Budget under OMB #1076-0131.

The primary authors of this document are Judy A. Baggett, Division of Social Services, Office of Tribal Services, and Janice Ruffin, Division of Law Enforcement Services, Bureau of Indian Affairs, Department of Interior.

List of Subjects in 25 CFR 63: Child welfare; Employment; Security information; Family health; Native Americans; Child welfare; Children.

For the reasons set out the preamble, Part 63 of Title 25, Chapter I of the Code of Federal Regulations is proposed to be added as set forth below.

PART 63 INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAMS

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Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; 42 Stat. 208, 25 U.S.C. 13; 38 Stat. 586, 25 U.S.C. 200; 25 U.S.C. 3201, et. seq.

Section 63.1 Purpose.

The purpose of this part is to prescribe minimum standards of character for employees whose duties and responsibilities allow them regular contact with or control over Indian children, and to establish the method for distribution of funds as mandated by the Indian Child Protection and Family Violence Prevention Act, P. L. 101-630, 25 U.S. C. 3201, November 28, 1990.

Section 63.2 Reserved.

Section 63.3 Definitions.

Bureau means the Bureau of Indian Affairs of the Department of the Interior;

Child means an individual who is not married, and has not attained 18 years of age.

Child abuse includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns,

fracture of any bone, subdural hematoma, soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution;

Child neglect includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened.

Family violence means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person is, or was, residing.

Indian means any individual who is a member of an Indian tribe.

Indian child means any unmarried person who is under age eighteen and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

Indian country means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same;

Indian reservation means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

Indian tribe means any Indian tribe, band, nation, or other organized group or

community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. Section 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Inter-tribal consortium means a partnership between an Indian tribe or tribal organization of an Indian tribe, and one or more Indian tribes or tribal organizations of one or more other Indian tribes.

Must is used in place of shall and indicates a mandatory or imperative act or requirement.

Local child protective services agency is an agency of the Federal Government, State, or Indian tribe that has the primary responsibility for child protection on any Indian reservation, or within any community in Indian country.

Local law enforcement agency is that Federal, tribal, or State law enforcement agency that has primary responsibility for the investigation of an instance of alleged child abuse within the involved Indian jurisdiction.

Persons responsible for a child's welfare is any person who has legal or other recognized duty for the care and safety of a child, and may include any employee or volunteer of a children's residential facility, and any person providing out-of-home care, education, or services to children.

Related assistance means the counseling and self-help services for abusers, victims, and dependents in family violence situations; referrals for appropriate health-care services (including alcohol and drug abuse treatment); and may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

Secretary means the Secretary of the Interior.

Shelter means the temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

Service means the Indian Health Service of the Department of Health and Human Services.

Tribal organization means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Subpart B SUITABILITY FOR EMPLOYMENT

Section 63.10 Purpose.

The purpose of this part is to establish:

(a) procedures for making determinations of suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act; and,

(b) minimum standards of character to ensure that individuals having *regular* contact with or control over Indian children have *not* been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.

Section 63.11 What is a determination of suitability for employment and efficiency of service?

(a) Determinations of suitability measures the fitness or eligibility of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc. Rather, it requires that the employer investigate the background of each applicant, volunteer, and employee to:

- determine the degree of risk the applicant, volunteer, or employee brings to the position; and,
- certify that the applicant's or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

(b) Efficiency of service is the employer's verification that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not inhibit other employees or the agency from performing their function.

Section 63.12 What are minimum standards of character?

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. Character traits and past conduct may be used by an employer to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others.

Minimum standards of character ensure that prior misconduct, including a conviction or a plea of nolo contendere or guilty of a crime of violence, a sex crime, an offense involving a child victim, or a drug felony will disqualify the applicant, volunteer, or employee from placement in a position where he/she would have regular contact with or control over Indian children.

Section 63.13 Who is required to determine suitability for employment and efficiency of service?

(a) All Indian tribes or tribal organizations that receive funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation and employ only individuals who meet standards of character that are no less stringent than those proscribed for the Bureau of Indian Affairs.

(b) The Bureau of Indian Affairs must compile a list of all authorized positions

which involve regular contact with or control over Indian children; conduct an investigation of the character of each individual who is employed, or is being considered for employment; and, prescribe minimum standards of character that each of such individuals must meet to be appointed to such positions.

Section 63.14 What positions require a determination of suitability for employment or retention?

All positions which allow an applicant, employee or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

Section 63.15 What questions should an employer ask?

(a) Employment applications must determine whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child and the disposition of the arrest or charge.

(b) Employment applications must require the applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application.

(c) Employment applications must inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

Section 63.16 Who conducts the background investigation and prepares determinations of suitability for employment?

(a) Indian tribes and tribal organizations may conduct their own background investigations, contract with private firms, or request the United State Office of Personnel Management to conduct an investigation. The investigation should cover the past five years of the individual's employment, education, etc.

(b) The Bureau of Indian Affairs must use the Office of Personnel

Management (OPM) to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.

Section 63.17 How is determination of suitability for employment and efficiency made and what is the process used to make that determination?

(a) Adjudication is the process used by employers to determine suitability for employment and efficiency of service. The purpose of the adjudication process is to protect the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) An adjudicating official conducts the adjudication. The adjudicating official is appointed by the Federal agency, Indian tribe, or tribal organization, and must first have been the subject of a favorable background investigation.

- Indian tribes and tribal organizations must assure that persons charged with the responsibility of adjudicating employee background investigations are well-qualified and trained.
- Indian tribes and tribal organizations should also assure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At minimum, the background investigation must include the following:

- review each security investigation form and employment application compare the information provided;
- review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and,
- review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other agencies which may maintain similar records.

(f) Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

- the nature and seriousness of the conduct in question;
- the recency and circumstances surrounding the conduct in question;
- the age of the individual at the time of the incident;
- societal conditions that may have contributed to the nature of the conduct;
- the probability the individual will continue the type of behavior in question;
- the individual's commitment to rehabilitation and a change in the behavior in question; and,
- the degree of public trust and possibility the public would be placed at risk if the individual is appointed to the position.

Section 63.18 Are the requirements for Bureau of Indian Affairs adjudication difference than the requirements for Indian tribes and tribal organizations?

(a) Yes. In addition to the minimum requirements for background investigations found in §62.12, Bureau of Indian Affair's adjudicating officials must review the results of searches by state human services agencies, the National Agency Check and Inquiries plus Credit, which includes a search of the OPM Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII).

(b) All Bureau of Indian Affairs employees that have regular contact with or

control over Indian children must be reinvestigated every five years during their employment in a P. L. 101-630 position.

Section 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer may deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any Federal, State or tribal offense involving a crime of violence, sexual assault, molestation, child exploitation, sexual contact, prostitution or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, a sex crime, or a drug felony.

Section 63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The employer may deny the applicant employment until the charge has been resolved.

(b) The employer may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The employer may detail or reassign the employee to other duties that do not involve contact with children.

(d) The employer may place the employee on administrative leave until such time as the court has disposed of the charge.

Section 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a sensitive position?

(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found:

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• the individual's misconduct or negligence interfered with or impacted a prior employer's performance of duties and responsibilities.

• the individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

• the individual employed an intentional false statement, deception or fraud on an examination or to obtain an appointment.

• the individual has refused to furnish testimony or cooperate with an investigation.

• the individual's alcohol or substance abuse is of a nature and duration which suggests the individual could not perform the duties of the position or would constitute a direct threat to the property or safety of others.

• the individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

• the individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent the lawful employment of that individual.

(c) An employer may still certify the individual is suitable for employment in a non-sensitive or sensitive position having no contact with children, if the prior conduct would not interfere with performance of duties and the position does not involve a high degree of public trust or potential for risk for Indian children.

Section 63.22 <u>What rights does an applicant, volunteer or employee have during this process?</u>

(a) The applicant, volunteer, or employee should have the opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should be provided with a written summary of all derogatory information and informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer or employee who is the subject of a background investigation may obtain a copy of the reports from the originating agency under the Freedom of Information Act (FOIA) and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation can *not* be used for any purpose other than to determine suitability for employment in a position which involves regular contact with or control over Indian children.

(e) The subject of the background investigation has the right to have investigative reports maintained in a confidential manner. Investigative reports may be viewed only by those officials who in the performance of their official duties have a need to know the information contained in the report.

Section 63.23 What protections must employers provide to applicants, volunteers and employees?

(a) Indian tribes and tribal organizations must comply with the Privacy Act requirements of any agency providing background investigations. Indian tribes and tribal organizations must establish and comply with personnel policies that safeguard information derived from background investigations.

(b) The Bureau of Indian Affairs must comply with all policies, procedures, criteria, and guidance contained in the Bureau of Indian Affairs Manual (BIAM) or other appropriate guidelines.

(c) Federal agencies exercising authority under this part by delegation from the OPM must comply with OPM policies, procedures, criteria, and guidance.

Section 63.24 through 63.29 Reserved.

SUBPART C: Program Functions

Section 63.20 Tribal government and tribal organization grants.

(a) Grant application information and technical assistance. Information on grant application procedures and related information may be obtained from the appropriate Agency Superintendent or Area Director. Pre-award, post-award and technical assistance to tribal governments and tribal organizations must be provided in accordance with Section 63.41 of this part.

(b) Eligibility requirements for tribal governments. The tribal government of any tribe, a tribal organization which will serve an on-reservation tribal population, or a consortium of tribes serving a federally recognized tribe(s) may submit an application for a grant to the appropriate Agency Superintendent or Area Director. A tribe, tribal organization, or a consortium may not submit more than one application for a grant nor be the beneficiary of more than one grant under this part.

(1) A Federal Register announcement will notify the eligible tribal applicants of the amount of funds available for the Child Protection and Family Violence Prevention Programs. The funding levels will be based on a funding formula including, but not limited to, projected service area population as identified by the tribal governments' most recent census unless a different number is identified by the tribal government, projected service area, projected number of cases per month and other special circumstances such as a high incidence of child abuse and neglect. Upon notification, receipt and distribution by the Agency Superintendent or appropriate Area Director, tribal applicants must submit a completed Child Protection and Family Violence Prevention application no later than 60 days after the Federal Register announcement.

(2) A grant awarded under this subpart must be limited to the tribal governing body, tribal organization or consortium who will serve people in Indian country.

(3) For purposes of eligibility for newly recognized or restored Indian tribes without established reservations, such tribes must be deemed eligible to apply for grants under this subpart to provide Child Protection and Family Violence

Prevention services within those service areas legislatively identified for such tribes.

(4) A grantee under this subpart may make a subgrant to another Indian tribe or tribal organization subject to the provisions of 25 CFR Part 63.44.

(c) Revision or amendments must be made by a written request and justification for a post-award grant modification covering changes to the grant activities and budget. The request must be submitted in the form of a narrative description. Final approval is subject to the approval of the grants officer.

(d) Continued annual funding is subject to availability of funds and must be subject to the fulfillment of the requirements stated at Section 63.22(b) of this Part. Funding must supplement, not supplant, other funds available for the same general purposes.

(e) Monitoring and program reporting requirements for grantees under this subpart are described in Sections 63.43 and 63.46 of this Part.

Section 63.21 Purpose of tribal government and tribal organization grants.

(a) Grants must be awarded, based on availability of funds, for the development and implementation of Indian Child Protection and Family Violence Prevention Programs operated on Indian reservations or in service areas legislatively identified for newly recognized or restored tribes. The objective of any Child Protection and Family Violence Prevention program must be to prevent or investigate child abuse and neglect and/or family violence or to provide service to such victims and their families.

(b) The Secretary is authorized to enter into agreements with Indian tribes, tribal organizations or tribal consortia pursuant to the Indian Self-Determination Act for the development and establishment of Indian Child Protection and Family Violence Prevention Programs. These programs must include, but not be limited to any or all of the following:

(1) Investigation of reported cases of child abuse and child neglect;

(2) Treatment and prevention of incidents of family violence;

(3) Provisions of immediate shelter and related assistance for victims of family violence and their dependents;

(4) Training programs for child protective services personnel, law enforcement personnel, medical personnel, education personnel, and judicial personnel in the investigation, prevention, and treatment of cases of child abuse and child neglect and family violence;

(5) Purchase of equipment to assist in the investigation of cases of child abuse and child neglect;

(6) Construction or renovation of facilities for the establishment of family violence shelters;

(7) Development of protocols among tribal, federal, state and other agencies for the coordination, investigation, counseling, prevention, and prosecution of child abuse and neglect and family violence incidents (Interagency agreements that define and specify each party's responsibilities are strongly encouraged);

(8) Development of child protection codes and regulations that provide for the care and protection of children and families on Indian reservations;

(9) Community education efforts to tribal members, and instruction in methods of protecting children from abuse and neglect for persons responsible for the welfare of Indian children; and

(10) Other culturally relevant programs and projects the Secretary or the Secretary's designee may approve.

(c) Grants under this subpart may enhance their capabilities by utilizing Child Protection and Family Violence Prevention funds as matching shares in connection with other federally funded programs which contribute to and promote the intent and purposes of the grants under this subpart.

(d) Any income resulting from the operation of programs under this subpart may be retained and used for purposes for which the grant was awarded.

Section 63.22 Tribal government and tribal organization application contents.

(a) Prior to the beginning of each application year(s), the Assistant Secretary -

Indian Affairs must publish, in the Federal Register, an announcement of the grant application process for the year(s) including program priorities or special considerations, applicant eligibility criteria, the required application contents, the amount of available funding, and evaluation criteria for Child Protection and Family Violence Prevention Programs. Grant application procedures, technical assistance and related information must be obtained from the Agency Superintendent or the appropriate Area Director.

(b) The following mandatory application requirements must be submitted to the appropriate Agency Superintendent or Area Director in accordance with timeframes established in the Federal Register notice;

(1) A current tribal resolution or a tribal organization's board of director's resolution must be submitted from the Indian tribe(s) to be served by the grant. If the applicant is applying for a grant benefiting more than one tribe (consortium), an authorizing tribal resolution must be included from each tribe to be served and should specify the duration of the resolution.

(2) A tribal organization must furnish a copy of it's current articles of incorporation, provide proof of the organization's non-profit status, provide a copy of the organization's liability insurance, provide a copy of the tribal organization's IRS tax exemption certificate and employer identification number.

(3) A complete application for Federal Assistance Form, SF-424 must be submitted.

(4) A narrative needs assessment must be provided addressing problems regarding safety and survival for families experiencing family violence and/or problems related to child neglect and abuse. Information must be provided on the estimated numbers of Indian children and families which will benefit from the program. The problems identified must be supported by documentation, such as copies of the monthly child abuse and neglect report submitted to Area Offices or copies of law enforcement reports stating the extent of family violence, child abuse and neglect the tribal communities are experiencing.

(5) A narrative description must be provided describing services that will be

provided under this grant which address the above identified child protection and family violence problems. At a minimum this description must include the number of people to be served; projected service area; goals and objectives stated in measurable terms; and a description of approaches, including culturally relevant approaches, to be used to deliver the identified services.

(6) A description of an evaluation system to be used to measure the accomplishments related to program goals and objectives must be provided.

(7) A recent written assurance that the requirements for Circular A-128 for fiscal management, accounting and recording keeping are met must be provided.

(8) A statement must be provided which states that the applicant will comply with the mandatory Drug-Free Workplace requirement.

(9) A copy of the applicant's current policies and procedures for implementing the mandatory criminal background check as required by P.L. 101-630 must be provided.

(10) A budget must be provided which contains applicable staffing and support costs that will achieve the goals and objectives of the application.

(11) If the applicant intends to hire a subgrantee to perform a part of the services to be provided, a written agreement outlining how the goals and objectives will be delivered, by whom and when must be in the application. The subgrantee must assure compliance with all stated regulations.

(12) If funds are to be used for staffing, a position description must be provided outlining the duties to be performed by each position, the qualifications, training and experience relevant to the services to be provided.

(13) The applicant must outline how they will comply with the existing federal requirement covering the property management system, the Privacy Act and Audit.

Section 63.23 Continued Funding.

Continued funding for Child Protection and Family Violence Prevention Program(s) will be contingent upon available funding and receiving an satisfactory annual evaluation. A satisfactory evaluation must, at a minimum, mean submitting all

required narrative and statistical report(s) and expenditures on a timely basis. The application's narrative report must cover all funded goals and objectives and meeting other requirements, such as, mandatory criminal background checks for all personnel hired under the grant.

Subpart D - Caseload Standards and Funding Formula

Section 63.30 Caseload standards.

The following caseload standards, comparable to the Child Welfare League of America standards, are recommended for caseworkers in Indian Child Protection and Family Violence Prevention programs:

(a) It is recommended that child protective caseworkers providing services to abused and neglected children and their families have a caseload of 20 active on-going cases and 5 active investigations per 1 caseworker.

(b) It is recommended that caseworkers providing services to strengthen and preserve families with children have a caseload of 20 families. If intensive family-centered crisis services are provided, a caseload of 10 families per 1 caseworker are recommended.

(c) It is recommended that caseworkers providing exclusively adoption services have a caseload of 30 prospective adoptive families per 1 caseworker, 20 children under 5 years of age per 1 caseworker, and 15 children per 1 caseworker for children 5 years of age and older.

(d) It is recommended that caseworkers providing services for foster family care have a caseload of 20-30 children per 1 caseworker.

(e) It is recommended that there be 1 supervisor per 6 caseworkers.

Section 63. 31 Funding formula.

(a) In any fiscal year that the appropriation for Indian Child Protection and Family Violence Prevention grants to tribes exceeds fifty percent (50%) of the level of funding authorized by the Act, two percent (2%) of the annual appropriation will be set aside for distribution to tribes demonstrating special circumstances

according to criteria published annually in the Federal Register. The balance of funds authorized must be distributed through a 50/50 division of the amount of funds available. Fifty percent (50%) must be distributed equally to all tribes and tribal organizations and fifty (50%) must be distributed on a per capita basis according to the population of children residing in the service area.

(b) In any fiscal year that the appropriation does not exceed fifty percent (50%) of the level of funding authorized for this purpose by the Act, funding must be distributed in equal amounts to all tribes and tribal organizations submitting applications.

Subpart E - General and Uniform Grant Administration Provisions and Requirements

Section 63.40 Uniform grant administration provisions, requirements and applicability.

The general and uniform grant administration provisions and requirements specified in 25 CFR part 276 and in this subpart are applicable to all grants awarded to tribal governments and tribal organizations under this part, except to the extent that they are inconsistent with an applicable Federal statute, regulation, or Office of Management and Budget (OMB) circular.

Section 63.41 Technical assistance.

(a) Pre-award and ongoing technical assistance may be requested by an Indian tribe or tribal organization from the appropriate agency or area office to which the tribe or organization will be submitting an application for funds under subpart C of this part. A request for pre-award technical assistance by an tribal organization must be received by the Area Director designated in the Federal Register announcement, for the state in which the applicant is located, no later than 10 days prior to the application deadline to assure sufficient time for area response.

(b) Pre-award and ongoing technical assistance may be provided by the appropriate BIA agency or area office for purposes of program planning and design, assistance in establishing internal program monitoring and evaluation criteria for

ongoing grant administration and management, and for other appropriate assistance requested.

(c) The area social services staff must provide technical assistance to grantees upon receipt of an authorized request from the grantee or when review of the grantee's quarterly performance reports shows that:

(1) A program is yielding results that are or will be detrimental to the welfare of the intended Indian beneficiaries of the program;

(2) A program has substantially failed to implement its goals and objectives;

(3) There are serious irregularities in the fiscal management of the grant; or

(4) The grantee is otherwise deficient in its program performance.

(5) Upon receiving an authorized request from the grantee, the area social services staff and/or grants officer must provide the necessary technical assistance to arrive at mutually determined corrective action the implementation, of the action, and the timeframes within which the corrective actions will be implemented.

Section 63.42 Authority for grant approval and execution.

Tribal government programs. The appropriate Agency Superintendent or Area Director may approve a grant application and its subsequent execution under subpart C when the intent, purpose and scope of the application pertains solely to reservations located within the jurisdiction of the agency or area office.

Section 63.43 Grant administration and monitoring.

All grantees under this part must be responsible for managing the day-to-day program operations to ensure that program performance goals are being achieved and to ensure compliance with the provisions of the grant award document and other applicable Federal requirements. Unless delegated to the Agency Superintendent, appropriate area office personnel designated by the Area Director must be responsible for all grant programs and fiscal monitoring.

Section 63.44 Subgrants.

A tribal government grantee may make a subgrant under subpart C of this part, provided that such subgrants are for the purpose for which the grant was intended and the grantee retains administrative and financial responsibility over the activity and the funds. The subgrantee must assure compliance with all stated regulations.

Section 63.45 Financial management, internal and external controls and other assurances.

Grantee financial management systems must comply with the following standards for accurate, current and complete disclosure of financial activities.

(a) OMB Circular A-87 (Cost principles for state and local governments and federally recognized Indian tribal governments).

(b) OMB Circular A-102 (Common rule 43 CFR part 12).

(c) OMB Circular A-128 (Single Audit Act).

(d) OMB Circular A-110 or 122 (Cost principles for non-profit organizations and tribal organizations, where applicable).

(e) Effective control and accountability must be maintained for all grants and grantees must adequately safeguard any property and must ensure that it is used solely for authorized purposes.

(f) Actual expenditures must be compared with budgeted amounts for the grant and financial information must be related to program performance requirements.

(g) Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, grant documents, or other information required by the grantee's financial management system. The Secretary or his/her designee may review the adequacy of the financial management system of an Indian tribe(s) or tribal organization applying for a grant under this part.

(h) Pursuant to 18 U.S.C. 641, whoever embezzles, steals, purloins, or knowingly converts to his or her use or the use of another, or without authority,

sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined, or converted must be fined not more than $10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100, he or she must be fined not more than $1,000 or imprisoned not more than one year, or both.

Section 63.46 Reports and availability of information to Indians.

(a) Any tribal government or tribal organization receiving a grant under this part must make general programmatic information and reports concerning that grant available to the Indian people it serves or represents. Access to this information may be requested in writing and must be made available within 10 days of receipt of the request. Except as required by title IV of Pub. L. 101-630, the Indian Child Protection and Family Violence Prevention Act, grantees must hold confidential all information obtained from persons receiving services from the program, and must not release such information without the individual's written consent. Information may be disclosed in a manner which does not identify or lead to the identification of particular individuals.

(b) Grantees must submit Standard Form 269 or 269A on a quarterly and an annual basis to report their status of funds by the dates specified in the grant award document.

(c) Grantees must furnish and submit the following written quarterly and annual program reports by the dates specified in the award document:

(1) Quarterly and annual statistical and narrative program performance reports which must include, but need not be limited to, the following:

(i) A summary of actual accomplishments and significant activities as related to program objectives established for the grant period;

(ii) The grantee's evaluation of program performance using the internal monitoring system submitted in their application;

(iii) Reports on all significant direct service grant activities including, but not limited to, the following information:

(aa) significant child protection or family violence prevention activities;

(bb) data reflecting numbers of individuals benefiting from program services and types of services provided, and

(cc) information and referral activities.

(iv) Child abuse and neglect statistical reports and related information as required by 25 U.S.C. 2434, Pub. L. 99-570, the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986;

(v) A summary of problems encountered or reasons for not meeting established objectives;

(vi) Any deliverable or product required in the grant; and

(vii)additional pertinent information when appropriate.

(2) The BIA may negotiate for the provision of other grant related reports not previously identified.

(d) Events may occur between scheduled performance reporting dates which have significant impact on the grant-supported activity. In such cases, the grantee must inform the awarding agency as soon as problems, delays, adverse conditions, or serious incidents giving rise to liability become known, which will materially impair its ability to meet the objectives of the grant.

Section 63.47 Matching shares and agreements.

(a) Grant funds provided to Indian tribes under subpart C of this part may be used as non-Federal matching shares in connection with funds provided under titles IV-B, IV-E and XX of the Social Security Act or such other Federal programs which contribute to and promote the purposes of the Act as specified in Parts 23.3 and 23.22 (25 U.S.C. 1931).

(b) Pursuant to 25 U.S.C. 1933, in furtherance of the establishment, operation,

and funding of programs funded under subpart C of this part, the Secretary may enter into agreements with the Secretary of Health and Human Services. The latter Secretary is authorized by the Act to use funds appropriated for the Department of Health and Human Services for programs similar to those funded under subpart C of this part (25 U.S.C. 1931 and 1932), provided that authority to make payment pursuant to such agreements must be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

Section 63.48 Fair and uniform provision of services.

(a) Grants awarded under this part must include provisions assuring compliance with the Indian Civil Rights Act; prohibiting discriminatory distinctions among eligible Indian beneficiaries; and assuring the fair and uniform provision by the grantees of the services and assistance they provide to eligible Indian beneficiaries under such grants. Such procedures must include criteria by which eligible Indian beneficiaries will receive services, recordkeeping mechanisms adequate to verify the fairness and uniformity of services in cases of formal complaints, and an explanation of what rights will be afforded an individual pending the resolution of a complaint.

(b) Indian beneficiaries of the services to be rendered under a grant must be afforded access to administrative or judicial bodies empowered to adjudicate complaints, claims, or grievances brought by such Indian beneficiaries against the grantee arising out of the performance of the grant.

Section 63.49 Service eligibility.

Tribal government Indian child and family service programs. Any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in Section 63.3 of this Part, is eligible for services. Tribal membership status must be determined by tribal law, ordinance, or custom. The tribe may, under subpart C of this Part, extend services to nontribal family members related by marriage to tribal members, provided such

services promote the intent and purposes of the Act. A tribe may also, within available resources, extend services under this part to individuals who are members of, or are eligible for membership in other Indian tribes, and who reside within the tribe's designated service area.

Section 63.50 Grant carry-over authority.

Unless restricted by appropriation, and contingent upon satisfactory program evaluations from the appropriate area or agency office for an existing program, grantees are authorized to carry over unliquidated grant funds which remain at the end of a budget period. Such funds may be carried over for a maximum period of two years beyond the initial grant funding period and must be utilized only for the intent, purpose and scope of the original grant. These carry-over grant funds must not be reprogrammed into other appropriation activities or subactivities. Funds carried over into another fiscal year will be added to the grantee's new fiscal year funding amount.

Section 63.51 Grant suspension.

(a) When a grantee has materially failed to comply and remains out of compliance with the terms and conditions of the grant, the grants officer may, after reasonable notice to the grantee and requested technical assistance, suspend the grant. The notice preceding the suspension must include the effective date of the suspension, the corrective measures necessary for reinstatement of the grant and, if there is no immediate threat to safety, a reasonable timeframe for corrective action prior to actual suspension.

(b) No obligation incurred by the grantee during the period of suspension must be allowable under the suspended grant, except that the grants officer may at his/her discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension if such costs would otherwise be allowable under the applicable cost principles.

(c) Appropriate adjustments to the payments under the suspended grant will

be made either by withholding the payments or by not allowing the grantee credit for disbursements which the grantee may make in liquidation of unauthorized obligations the grantee incurs during the period of suspension.

(d) Suspension must remain in effect until the grantee has taken corrective action to the satisfaction of the grants officer, or given assurance satisfactory to the grants officer that corrective action will be taken, or until the grants officer cancels the grant.

Section 63.52 Cancellation.

(a) The grants officer may cancel any grant, in whole or in part, at any time before the date of completion whenever it is determined that the grantee has:

(1) Materially failed to comply with the terms and conditions of the grant;

(2) Violated the rights as specified in Section 63.38 of this Part, or endangered the health, safety, or welfare of any person; or

(3) Been grossly negligent in, or has mismanaged the handling or use of funds provided under the grant.

(b) When it appears that cancellation of the grant will become necessary, the grants officer must promptly notify the grantee in writing of this possibility. This written notice must advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The grants officer must also offer, and must provide, if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee must have 60 days in which to effect this corrective action before the grants officer provides notice of intent to cancel the grant as provided for in paragraph (c) of this section.

(c) Upon deciding to cancel for cause, the grants officer must promptly notify the grantee in writing of that decision, the reason for the cancellation, and the effective date. The Area Director or his/her designated official must also provide a hearing for the grantee before cancellation. However, the grant officer may immediately cancel the grant, upon notice to the grantee, if the grant officer determines that continuance of the grant poses an immediate threat to safety. In

this event, the Area Director or his/her designated official must provide a hearing for the grantee within 10 days of the cancellation.

(d) The hearing referred to in paragraph (c) of this section must be conducted as follows:

(1) The grantee affected must be notified, in writing, at least 10 days before the hearing. The notice must give the date, time, place, and purpose of the hearing.

(2) A written record of the hearing must be made. The record must include written statements submitted at the hearing or within five days following the hearing.

Subpart F - Appeals

Section 63.60 Appeals from decision or action by Agency Superintendent, Area Director or Grants Officer.

A grantee or prospective applicant may appeal any decision made or action taken by the Agency Superintendent, Area Director, or grants officer under subpart C of this part. Such an appeal must be made to the Assistant Secretary who must consider the appeal in accordance with 25 Code of Federal Regulations (CFR) Chapter I Part 2.20 (c) through (e). Appeal procedures must be as set out in part 2, Chapter I of the 25 CFR.

Section 63.61 Appeals from inaction of official.

A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, may make the official's inaction the subject of an appeal under part 2, Chapter I of the 25 CFR.

_____
Date

_____
Ada E. Deer
Assistant Secretary - Indian Affairs

Putting Children First:
Reporting and Preventing Child Abuse in Our Schools

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WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

JAN 2 4 1995

Memorandum

To: All Area Education Program Administrators
All Agency Superintendents for Education
Attention: All School Principals

From: Ada E. Deer
Assistant Secretary - Indian Affairs

Through: Director, Office of Indian Education Programs

Subject: "PUTTING CHILDREN FIRST: Reporting and Preventing Child Abuse in Our Schools"

The Bureau of Indian Affairs (BIA) is pleased to support the distribution of the document, "Putting Children First: Reporting and Preventing Child Abuse in Our Schools". This document was initiated, developed, and coordinated with The BIA's Office of Indian Education Programs (OIEP), Branch of Exceptional Education (BEE) and Mountain Plains Regional Resource Center (MPRRC).

The Handbook is intended to inform professionals working in BIA funded schools about child abuse and how to report it by using established OIEP reporting guidelines. It also explores factors that put families at risk for abuse, including issues unique to American Indian families and families with children with disabilities. Information in the area of child abuse prevention is addressed along with appropriate responses, which may be used in discussing abuse with a child.

It is the policy of the BIA that child abuse will not be tolerated. All BIA contract and grant employees have a responsibility for prompt reporting and appropriate administrative action in such situations. One of our main focuses as a customer service entity, must be protecting the well being of children.

A safe and protective environment in our education system promotes effective learning. OIEP's main area of responsibility in safeguarding this learning arena is that of reporting alleged abuse incidents through the channels of Law Enforcement/Child Protective Services. The OIEP continues to encourage the communication and coordinating of all pertinent service providers to promote a supportive school environment for students. Please help us continue the BIA's national commitment to child protection.

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This document was developed by the Mountain Plains Regional Resource Center and Drake University with partial support provided by the U.S. Department of Education, Office of Special Education and Rehabilitative Services, Grant Number H028A30009. The contents of this document do not necessarily reflect the position or policy of the U. S. Department of Education.

PUTTING CHILDREN FIRST

This handbook is intended to inform professionals working in BIA-funded schools about child abuse and how to report it. The handbook also explores factors that put families at risk for abuse, including issues unique to American Indian families and families with children with disabilities.

What is abuse?

According to the Child Abuse Prevention and Treatment Act of 1974, Public Law 93-247, "child abuse" is:

> the physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances that indicate that a child's health or welfare is harmed or threatened.

This federal law requires all states to establish reporting guidelines and laws related to child abuse. In 1988, Public Law 100-204, the Child Abuse Prevention, Adoption and Family Services Act, amended Public Law 93-247. This amendment includes the recognition that children with disabilities need additional protection, and care-providers of children with disabilities need extra training.

In 1990, Public Law 101-630, or the Indian Child Protection and Family Violence Prevention Act (Title IV, Sec. 404), was passed. This federal law provides a framework for reporting suspected incidents of child abuse.

Families at risk

Increasing pressures on today's families unfortunately make child abuse and neglect a real problem. Child abuse happens in all types of families. Although it's hard to understand why people abuse children, the following risk factors have been identified as those which may cause some parents or caretakers to become abusive:

- isolation
- physical or emotional stress
- a history of violence in the family
- poor economic conditions
- lack of knowledge about child rearing/development
- poor parenting role models
- societal or cultural values condoning child maltreatment

(Child Protection Reference Book, 1990)

Increased risks for children with disabilities

Children with disabilities have been found to be at an increased risk for abuse and neglect. A report by the National Center on Child Abuse and Neglect found that incidents of maltreatment among children with disabilities was 1.7 percent higher than for children without disabilities. In nearly half of the cases studied, the child's disability directly led or contributed to the abuse. The study noted that the special demands placed on parents of disabled children may contribute to their stress level and subsequent loss of control (Crosse, Kay, Ratnofsky, 1988).

Children with disabilities may also be more vulnerable to abuse if they have impaired judgment, low self-esteem, difficulty communicating or are impulsive. These children may also be more susceptible to the use of bribes, threats and coercion. Often these children are not even aware that they are being abused (PACER Center, 1989).

Families caring for a child with a disability may experience increased stress if they have increased daily care and financial obligations for the child or have feelings of frustration, anger, guilt or sadness. These families may not have enough resources, support or information about the child's disability (PACER Center, 1990).

American Indian families and child abuse

Many American Indian families have experienced societal changes that affect their traditional family structure. The extended family system, including relatives on both sides of the parent's families and even non-related friends, plays an important role in the Indian culture. These extended families have contributed to raising and educating Indian children. As more Indian children began attending boarding schools and were separated from their families, this system of support started to dissolve. Many children were unable to continue their religion, language and other aspects of their traditional culture.

The implication of these changes is that many of these children have no Indian parenting models. Many young Indian parents who have relocated from reservations to urban settings have experienced social isolation and difficulty adjusting to the demands of their new cultural setting. These factors may play a large part in the increased risk factors for abuse among American Indian children (Northwest Indian Child Welfare Association, Inc., 1979).

REPORTING ABUSE

Educators and other professionals working with children need to be aware of the guidelines to follow when they suspect a child has been abused. The following guidelines apply to education employees who are employed in the BIA-operated schools, grant schools or contract schools.

School employees are responsible for reporting incidents of suspected abuse or neglect. The appropriate law enforcement officials are responsible for the investigation of such incidents. The BIA encourages the networking and coordinating of appropriate services to provide a supportive environment for the alleged victim.

Reporting alleged child abuse incidents

It is mandatory to report all alleged cases of child abuse in the BIA-funded school system. It is the policy of the Bureau that child abuse will not be tolerated. All employees of Bureau-funded schools have a mandated responsibility for prompt reporting of alleged incidents of abuse. This action is required by The Indian Child Protection And Family Violence Prevention Act, P.L. 101-630, Title IV, Section 404, Reporting Procedures.

The following guidelines apply to education employees who are employed in the BIA-operated schools, grant schools or contract schools:

- Education employees who know or who have reasonable suspicion concerning child abuse incidents shall immediately report such abuse or actions to the local law enforcement agency or local child protective services. The employee can also report the alleged abuse on the BIA Hotline at 1-800-633-5155.

- Any person making such a report based on their reasonable belief and in good faith shall be immune from civil or criminal liability. (P.L. 101-630, Title IV, Section 404(d)).

- If the alleged perpetrator is an employee of a BIA-operated school, the law enforcement officer shall notify the school principal. The principal shall immediately notify the OIEP Line Officer, who is responsible for central office notification. It is strongly recommended that grant and contract schools follow this same procedure.

- Any person who supervises, or has authority over the person reporting, and inhibits or prevents that person from making that report is subject to being fined not more than $5,000 or imprisoned for not more than six months or both (P.L. 101-630, Title IV, Section 404(d)).

- BIA policy is that any employee against whom any specific allegation of child abuse is made shall be immediately reassigned to a position requiring no contact with or control over children, pending resolution of the allegation as quickly as possible.

- All cases of child abuse allegations shall be treated with the utmost confidentiality by all employees involved.

Procedures for reporting child abuse to the Office of Indian Education Programs (OIEP) central office

It is imperative that education personnel comply with the reporting mandate Public Law 101-630. When an alleged case of child abuse which involves education personnel or a potentially sensitive situation is reported in the BIA funded system, it is to be reported to the OIEP central office. These guidelines are to be implemented by the OIEP Line Officer:

The OIEP Line Officer shall immediately notify, by phone, at least one OIEP staff member from the following list. Reporting procedures call for the list to be used in sequence.

1. Deputy Director (202) 208-6175
2. Child Abuse Coordinator (202) 208-6675
3. Assistant Director (202) 208-7388

The staff person receiving the information will inform the other key staff on the list. The Deputy will brief the Director. In the case where the three designated staff listed above cannot be reached, the alleged case information is to be provided to the Director or in his absence, the Acting Director.

The Child Abuse Coordinator is to keep a log of all reported personnel or potentially sensitive alleged reports. Other Bureau service providers (i.e.: Law Enforcement, Social Services, BIA Child Abuse Coordinator, etc.) will be notified as necessary. The Line Officer shall forward a written summary and update to the Coordinator within 3-5 working days. The Coordinator will keep an updated log on the information provided.

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Each alleged incident which involves personnel or students and which is made known to the Principal shall be reported to the Line Officer. The Principal shall keep a secured log of each known incident, with the log stating basic information only (i.e., name, date of report, type of abuse, referral and date reported to Law Enforcement/Child Protective Services). It is the responsibility of local Law Enforcement/Child Protective Services to initiate the investigation. Therefore only basic information is to be kept on file at the school level.

Reporting annual information to OIEP

Area Education Program Administrators and Agency Superintendents for Education are asked to supply the following information for any alleged child abuse incidents in their area of responsibility by the end of each school year, no later than June 30th. All schools should be included in the total numbers.

After the information is compiled, it should be forwarded to the OIEP Child Abuse Coordinator, MS 3512 MIB, Washington, D.C. 20240.

Education Line Office:_____ School term 19_____

Total number of schools: _____ Total number of incidents: _____

Total number of incidents in each type of school:
BIA: _____ Contract: _____
Grant: _____ Boarding: _____

A) Types of abuse — Number of incidents
- Physical _____
- Sexual _____
- Emotional _____
- Neglect _____

B) Of the total number of incidents, how many involved personnel?_____
Provide breakdown: ____ physical ____ sexual ____ emotional ____ neglect
Provide school type: ____ BIA ____ Grant ____ Contract ____ Boarding
____ number of convictions____ number under investigation ____ number of allegations unfounded

How many involved special education students?_____
Provide breakdown: ____ physical ____ sexual ____ emotional ____ neglect
Provide school type: ____ BIA ____ Grant ____ Contract ____ Boarding
____ number of convictions____ number under investigation ____ number of allegations unfounded

C) Provide a brief description of child protection training this school year: (Include dates, length of training, the number of participants for each training session and describe training plans for the upcoming school year.)

PREVENTING ABUSE

A critical part of preventing child abuse is being able to accurately determine whether abuse has taken place. Recognizing the different types of abuse and their warning signs can help develop an awareness about the child and establish whether he or she is indeed being abused.

Definitions and indicators of abuse

The presence of one symptom or characteristic does not necessarily mean a child has been abused or neglected. However, the repeated presence of these symptoms or indicators, along with statements that the child has made, could suggest that something may be wrong and should be investigated.

The following definitions and indicators are adapted from: *Child Protection Reference Book*, U.S. Department of the Interior, 1990; *Let's Prevent Abuse*, PACER Center, Inc., 1989; and *Walking in your child's moccasins*, Northwest Indian Child Welfare Association, 1990. This information is not intended to be an all-inclusive list. It is meant to alert professionals, parents and caregivers to the various warning signs and to the possibility that abuse may have occurred or may be occurring.

Physical abuse

Any intentional physical injury or pattern of injuries inflicted or caused by a parent, guardian, and/or caregiver.

Physical indicators

- Injuries are bilateral and appear clustered on the child's body.
- Repeated injuries. Signs of new injuries before old injuries have healed.
- Unexplained injuries. The child refuses to explain how the injury occurred or offers contradictory explanations about the origin of the injury.
- Complaints of abdominal pain (indication of possible internal injuries).
- Unexplained bruises, welts or scars; skeletal or head injuries.
- Unexplained lacerations or abrasions.
- Unexplained burns.

- Ocular injuries.
- Bite marks. U-shaped human teeth marks, not V-shaped animal marks.

Behavioral indicators

- School absence correlates with appearance of injury.
- Easily frightened or fearful.
- Apathetic. Child appears to be in a stupor.
- Aggressive or self-destructive behavior.
- Pseudo maturity. Children develop extremely precocious skills in initiating social contact with adults as a way to guard and protect themselves.
- Wary of physical contact.
- Personality shifts. Abused children may develop a "chameleon nature." They learn to shift and change their behavior according to the inconsistent environment provided by their parents.
- Academic retardation. Abused children may show deficits in gross motor development, speech, and language.

Sexual abuse

The exploitation of a child for the sexual gratification of an adult. Examples include: fondling, exhibitionism, pornography, sexually provocative language and/or behavior with a child or adolescent used with the intent of coercion, oral penetration, anal or vaginal fondling or penetration.

Physical indicators

- Difficulty walking or sitting. Be alert for evasive or illogical explanations.
- Bruises on external genitalia, vaginal and/or anal regions.
- Bleeding from external genitalia, vagina and/or anal region.

- Torn, stained or bloody clothing.
- Sexually transmitted diseases.
- Loss of appetite.
- Unexplained gagging.
- Pregnancy. Although the pregnancy may not be the direct result of incest, factors leading to overt or promiscuous sexual activity by a teenager may have earlier roots in incestuous family activities.

Behavioral indicators

- Direct reports from children. Children seldom lie about such a serious matter; concealment is more often the rule. Not all children are able to tell their parent(s) directly that they have been or are being molested. You may be the child's only confidant. Do not simply disregard the child's story as nonsense. Follow the proper channels and report the case.
- High levels of anxiety.
- Sleep disturbances.
- Nightmares or fear of going to bed; fear of sleeping alone.
- Bed wetting.
- Exaggerated fears.
- Clinging behaviors.
- Avoidance of bathrooms.
- Excessive masturbation.
- Low self-esteem. Shameful, self-punitive feelings.
- Regression. Young children may retreat into a fantasy world or exhibit infantile behavior.

- Unwillingness to participate in physical activities. Young children who have had forced sexual intercourse may find it painful to sit or play active games.

- Drug use/abuse. Use of alcohol and/or drugs may be a child's avenue for handling guilt and anxiety.

- Frequent absences from school.

- Indirect allusion. Sometimes sexually abused children will confide in teachers with whom they have a good rapport and from whom they think they can get help. The confidences may be veiled and vague but allude to a home situation by indicating, "I'm going to find a foster home to live in," "I'd like to live with you," or, "I'm afraid to go home tonight."

- Aggression and/or delinquency. The anger, hostility, and fear of the consequences of sexual abuse, especially in adolescents, may prompt delinquent, hostile, and/or aggressive behavior toward people and property.

- Poor peer relationships. Children may be unable to form stable and continuing relationships with others their own age or they may suddenly distance themselves from their close friends.

- Seductive behaviors. If children identify sexual contact as a positive reinforcement for attention, they may adopt seductive behaviors with both peers and adults.

Emotional abuse

A pattern of behavior, taking place over an extended period of time, characterized by intimidating, belittling and otherwise damaging interaction that affects a child's emotional development and sense of self worth.

Physical indicators

- Eating disorders.

- Bed-wetting problems.

- Sleep disturbances and nightmares.

- Failure to thrive in infancy and early childhood.

Behavioral indicators

- Extremely aggressive or passive.
- Attitudes in the home are tense, hostile or threatening. The child is met with overt or subtle rejection or made to feel that (s)he does not belong.
- Direct comments from child. The child or adolescent openly states that (s)he can never do anything right after making an error or mistake.
- Low sense of self-worth. The child perceives him/herself as being worthless, as a failure, and as unacceptable and disappointing to adults..
- Defeat/rebellion. Adolescents may become truant, quit school or become runaways. Other s may psychologically quit the family and become incorrigible.
- Defiance. Children may defy parental and adult authority. Some may continue to attend school but refuse to perform. Others may stay home but refuse to do work or household chores.
- Delinquency. Adolescent reactions to inappropriate parental expectations may lead to more serious delinquent behaviors.

Physical neglect

The failure of the person(s) responsible for child's care to provide necessary food, shelter, medical care, supervision, or education to a child under age 18.

Physical indicators

- Undernourishment or malnourishment. The child may be underweight from not eating or overweight from an unbalanced diet.
- Constant fatigue or listlessness.
- Poor hygiene. Filth and dirt on the child's body or clothing.
- Insufficient clothing. The child may lack an essential part of clothing (shoes, jacket), wear the same clothes each day or have clothes badly in need of repair.

- Insufficient medical care. This includes unattended physical problems, medical or dental needs.

- Body odors. Offensive body odors from not bathing regularly.

Physical neglect may also relate to situations where children and adolescents are left alone without adult supervision for substantial periods of time. The following conditions indicate that a child is being neglected:

- Working parents who make no arrangements for the care of their children.

- Children who are left unattended at night while parents are out of the home (for hours) or are left unattended for a substantial period of time (for days).

Behavioral indicators

- Inability to concentrate.

- Depressed, dull, apathetic appearance.

- Steals or begs for food, or refuses to eat.

- Physical, emotional, intellectual developmental lags.

Emotional neglect

Emotional neglect is an intangible that is difficult to measure. It may be defined as the failure to provide nurturance necessary for a child's psychological growth and development. School personnel seldom witness parents emotionally neglecting their child(ren); instead, behavioral manifestations are visible.

Parental behaviors indicating emotional neglect

- Lack of support. Parents fail to provide the emotional support necessary for the development of a healthy personality or with consistent age-appropriate guidelines. Parents overprotect the child and inhibit appropriate social and emotional growth of the child.

- Lack of empathy. Parents demonstrate an inability to be empathically aware of their child(ren)'s needs. Parents feel they will "spoil" the child by providing "too much" love. A high premium is placed on the child being good, acting right, learning to be obedient.

- Child used for need gratification. By direct actions, or indirectly (with equally meaningful implications), the child is used as an object for need gratification of the adult. The child is expected to perform in the role of a surrogate husband, wife, mother or father in a family where one parent is absent or incapacitated.

Characteristics of neglect

Neglect may be manifested in the following behaviors. The child:

- "takes over" and begins to care for his/her parents' needs.
- is clinging, demanding adult attention.
- fails to develop social relationships.
- is consistently tardy or truant.
- is reluctant to go home and stays after school to help clean up.
- exhibits extreme possessiveness of toys and games.
- may be resentful of other children or adults and become destructive.
- may steal articles of clothing or food from others.
- may engage in delinquent and acting-out behaviors.
- may exhibit low self-esteem.
- makes no demands on adults.
- has feelings (expressed or not) of being unwanted, abandoned.
- distrusts adults.
- may show "academic retardation" — not a true indication of abilities.
- may be delayed in language and speech development.

DISCUSSING ABUSE WITH A CHILD

The following ideas might be useful when talking with a child for whom abuse is suspected.

Believe the child

- Accept what the child is telling you about what happened.
- Ask open-ended questions.
- Let the child set the pace. Use the child's terminology, but use words that the child understands (especially important for children with speech and language difficulties).
- Remain calm if an injury is observed.

Empower the child

- Assure the child that he or she has done nothing wrong in telling about the abuse. Help the child to understand that it is not bad for him or her to talk about what has happened.

- Maintain confidentiality and assure the child that other teachers and classmates won't be told. Indicate honestly what you will do with the information. Let the child know you are mandated to report to appropriate people.

Offer support

- Choose a private, non-threatening setting.

- Sit near the child, but respect his or her need NOT to be touched.

Validate

- Reassure the child that he or she has done nothing wrong.

- Consider his or her developmental level or disability. If necessary, seek out other personnel who would know the child's level of functioning, such as a social worker or child psychologist.

Follow-up

- Write up brief notes immediately, including date and time of disclosure.

- With a child who has a limited vocabulary because of a disability, be sure to document any unusual physical observations of the child, such as unusual body language indicative of abuse.

- Let the child know he or she can expect continued support. Provide ongoing reassurance to enable the child to feel positive about reporting. Helping an abused child restore confidence and belief in himself or herself is essential for the child's healing.

- Follow the appropriate reporting guidelines established by the Office of Indian Education Programs.

Source: *"Let's Prevent Abuse: A prevention handbook for early childhood professionals and families with young children"*, PACER Center, 1989; *"Let's Prevent Abuse: An information guide for educators,* PACER Center, 1990.

RESOURCES

Organizations

Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, D.C. 20013-1182; (703) 821-2086. This clearinghouse, sponsored by the National Center on Child Abuse and Neglect, offers information on the prevention and treatment of child abuse and neglect.

National Resource Center on Child Abuse and Neglect, 63 Inverness Drive East, Englewood, CO 80112-5117; (303) 792-9900 or (800) 227-5242. This resource center aids both the public and professionals by collecting and disseminating information on recognized and new resources, delivering training and technical assistance and by identifying and responding to emerging issues in the field.

National Resource Center on Child Sexual Abuse, 107 Lincoln Street, Huntsville, AL 35801; (205) 534-6868 or (800) KIDS-006. This resource center offers services to help professionals better investigate, manage and treat sexual victimization cases and respond to the cultural and ethnic needs of victims and their families.

National Committee to Prevent Child Abuse, 332 S. Michigan Avenue, Suite 1600, Chicago, IL 60604; (312) 663-3520. This organization strives to prevent child abuse in all its forms. Its catalog includes materials for parents, children and service providers.

Northwest Indian Child Welfare Association, Inc., 3611 SW Hood, Suite 201, Portland, OR 97207; (503) 222-4044. This organization strives to improve the lives of Indian children and their families by providing information about the needs and problems of these children, developing support groups and by offering training and consultation.

PACER Center Inc., 4826 Chicago Avenue South, Minneapolis, MN 55417-1055; (612) 827-2966 Voice & TDD. This center provides training, workshops, information and individual assistance to parents of children with disabilities. PACER's Let's Prevent Abuse project has produced several documents on abuse prevention for parents and professionals.

National Toll-Free Hotlines

Bureau of Indian Affairs Child Abuse Hotline–1-800-633-5155. Open Monday-Friday, 8:00-4:30 (MST), this hotline is designed for reporting suspected incidents of abuse of children in Indian Country.

Toughlove International–1-800-333-1069. Support program for parents who are having problems with teenagers and adult children. For more information write P.O. Box 1069, Doylestown, PA 18901.

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A Broken Heart

by Melanie E. Solomon, Youth
Lummi Nation
Lummi, WA

There's nothing worse,
nothing in the land,
than a broken child with a broken heart in his hand.
The love that was in his eyes
is no longer there.
This is something that I cannot bear.
A tear comes to my eye when
I think of a beaten child.
When THEY have children
Their tempers won't be very mild.
Harsh words from a parent's
mouth cuts deeper than any knife,
Be more considerate to those children
to whom you gave life.

A simple word
can set them off into a fit,
what bad thing could they do to get hit.
The injury is not only skin deep,
the pain inflicted is one that children keep.
Healing the people
and honoring the children is needed,
Helping these children
is what is pleaded.
Do not ignore the kids,
that hurts too,
Hopefully you will understand
without it happening to you.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 2 2 1995

Mr. Allan English
Chairman, Circle of
Nations School
P.O. Box 224
Red Lake, Minnesota 56671

Dear Mr. English:

We have reviewed the summary report of the second visit of the Implementation Team to the Circle of Nations School on February 27 through March 2, 1995. It is very clear that the school is not providing a safe, supportive and nurturing environment for the children under your care. As school board members, it is your individual responsibility to assure that student safety is the number one priority at the Circle of Nations School. It is a sad commentary that these children have been more or less left on their own.

The concern regarding student safety is not new, but what is frustrating and of concern is that it has been allowed to flounder this long and continue to put children at risk. The school board must be more involved, aware and active in overseeing the operation of the school. Each individual board member has a responsibility not only to the Tribes they represent but to the Tribes the children represent. Each one of the board members must be willing to take the time and responsibility to ensure that the children are safe. If board members are not willing to take the time necessary to personally assure that each student is safe and is receiving a quality education, then the Tribes need to identify individuals who can. As board members, each individual must fully understand exactly what is happening at the school and hold the school superintendent responsible. If the school administration cannot do the job of providing a safe and nurturing campus and program, then it is the responsibility of the school board to hire competent administrators who can. It appears to me that major changes must be made immediately and every step taken to get the school back on track. Even though it is a therapeutic school, it is still a school and as a school must educate, nurture and protect each child.

We are pleased that a meeting has been arranged with the Implementation Team members and representatives from the central office on March 27, 1995, in Minneapolis, Minnesota. Time is of essence and it is critical that we are notified of the board's decisions by March 31, 1995.

We must work together to put our children first. We as the adults are the ones responsible for providing for our children. Let me assure you that we want to work with the school board for the sake of our children but the conditions existing at the school can no longer be tolerated.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

cc: Tribal Chairpersons

BUREAU OF INDIAN AFFAIRS (BIA) FUNDED SCHOOLS ALLEGED CHILD ABUSE INCIDENTS SCHOOL REPORTING GUIDELINES

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:
Exceptional Education
Code OIE-23

APR 18 1994

Memorandum

To: All Agency Superintendents for Education
All Area Education Program Administrators
Attention: All School Principals

From: Director, Office of Indian Education Programs

Subject: Reporting Guidelines For Bureau of Indian Affairs (BIA) Funded Schools Alleged Child Abuse Incidents

The purpose of this memorandum is to clarify the BIA, Office of Indian Education Programs (OIEP) reporting procedures for alleged child abuse incidents. This memorandum is to supersede all previous memoranda regarding the reporting of alleged incidents within BIA funded schools.

THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT, Pub. Law 101-630, was passed on November 28, 1990. The BIA Child Protection Reference Book was published in September of 1990. To the extent the BIAM provisions are inconsistent with the Act (Pub. Law 101-630), these provisions are preempted by Federal law. Therefore, you are now obligated to follow the reporting framework in Pub. Law 101-630, Title IV, Section 404, Reporting Procedures.

Attached are the BIA funded schools alleged child abuse incidents/ reporting guidelines which have been written to reflect the intent of the law. We are in the process of submitting the format for revision in the BIAM. In the interim you are to follow these guidelines for the reporting of alleged child abuse incidents.

OIEP's main area of responsibility in the area of child protection is that of reporting. It is not our responsibility to provide the investigation of such incidents. The appropriate law enforcement office is to implement this function. We do, however, encourage the networking and coordinating of appropriate services to provide a supportive environment for the alleged victim.

If you have further questions, please contact Christine Brown, (202) 208-6675.

Attachment

Bureau of Indian Affairs (BIA) Funded Schools Alleged Child Abuse Incidents School Reporting Guidelines

It is mandatory to report all alleged cases of child abuse in the BIA funded school system. It is the policy of the Bureau that child abuse will not be tolerated. All employees of BIA funded schools have a mandated responsibility for prompt reporting of alleged incidents of abuse. This action is required by THE INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT, Pub. Law 101-630, Title IV, Section 404, Reporting Procedures.

The following guidelines apply to education employees who are employed in the BIA operated schools, grant schools or contract schools:

> Education employees who know or who have reasonable suspicion concerning child abuse incidents shall immediately report such abuse or actions to the local law enforcement agency or local child protective services.

The employee also has the option to report the alleged abuse on the BIA Hotline at 1-800-633-5155.

Any person making such a report based on their reasonable belief and in good faith shall be immune from civil or criminal liability Pub. Law 101-630, Title IV, Section 404(d).

If the alleged perpetrator is an employee of a BIA operated school, the law enforcement officer shall notify the school principal. The principal shall immediately notify the OIEP Line Officer, who is responsible for Central Office notification. It is strongly recommended that grant and contract schools follow this same procedure.

Any person who supervises, or has authority over the person reporting and inhibits or prevents that person from making the report is subject to being fined not more than $5,000 or imprisoned for not more than 6 months or both. Pub. Law 101-630, Title IV, Section 404(b)

BIA Policy is that any employee against whom any specific allegation of child abuse is made shall be immediately reassigned to a position requiring no contact with or control over children pending resolution of the allegation as quickly as possible.

- **ALL CASES OF CHILD ABUSE ALLEGATIONS SHALL BE TREATED WITH THE UTMOST CONFIDENTIALITY BY ALL EMPLOYEES INVOLVED.**

OIEP ANNUAL REPORT
CHILD ABUSE INCIDENTS

To be completed by Area Education Program Administrators and Agency Superintendents for Education.

Please complete this annual report for any alleged child abuse incidents in your areas of responsibility. The report should be completed by the end of each school year no later than June 30th. All schools should be included in the total numbers. After the information is compiled the form is to be forwarded to OIEP Child Abuse Coordinator, MS 3512 MIB, Washington, D.C. 20240.

EDUCATION LINE OFFICE _____ SCHOOL TERM 19___

TOTAL # OF SCHOOLS _____ TOTAL # OF INCIDENTS _____

THE TOTAL NUMBER OF INCIDENTS IN EACH TYPE OF SCHOOL:

BIA _____ CONTRACT _____

GRANT _____ BOARDING _____

A.) TYPES OF ABUSE # OF INCIDENTS

Physical _____

Sexual _____

Emotional _____

Neglect _____

B.) OF THE TOTAL # OF INCIDENTS, HOW MANY INVOLVED PERSONNEL:_____ SPECIAL EDUCATION STUDENTS_____

Provide breakdown: ____ physical ____ sexual ____ emotional ____neglect

Provide school type: ____ BIA ____Grant ____ Contract ____ Boarding

____number of convictions ____number under investigation ____number of allegations unfounded

C.) PROVIDE A BRIEF DESCRIPTION OF CHILD PROTECTION TRAINING THIS SCHOOL YEAR: include dates, length of training, the # of participants for each training session and describe training plans for the upcoming school year.

IN HOUSE CHILD ABUSE INCIDENT REPORTING PROCEDURES TO CENTRAL OFFICE OFFICE OF INDIAN EDUCATION PROGRAMS (OIEP)

FOR: BUREAU OF INDIAN AFFAIRS (BIA) FUNDED SCHOOL PERSONNEL AND ALL OTHER POTENTIALLY SENSITIVE ALLEGED INCIDENTS INVOLVING EDUCATION PROGRAMS

It is imperative that Education Personnel comply with the reporting mandate Pub. Law 101-630. When an alleged case of child abuse is reported in the BIA funded school system which involves education personnel or a potentially sensitive situation, it is to be reported to OIEP central office. These guidelines are to be implemented by the OIEP Line Officer:

The OIEP Line Officer shall immediately notify, by phone, at least one OIEP staff member from the following list. When reporting, the list should be used in sequence.

1. Deputy Director 202-208-6175
2. Child Abuse Coordinator 202-208-6675
3. Assistant Director 202-208-7388

The staff person receiving the information will inform the other key staff one the list. The Deputy will brief the Director. In the case where the three designated staff listed above cannot be reached, the alleged case information is to be provided to the Director or in his absence, the Acting Director.

The Child Abuse Coordinator is to keep a log of all reported personnel or potentially sensitive alleged reports. Other Bureau service providers (ie: Law Enforcement, Social Services, BIA Child Abuse Coordinator etc.) will be notified as necessary. The Line Officer shall forward a written summary and update to the Coordinator within 3-5 working days. The Coordinator will keep an updated log on the information provided.

Each alleged incidents involving personnel or students, which are made known to the Principal, shall be reported to the Line Officer. The Principal shall keep a secured log of each known incident stating basic information only: ie, name, date of report, type of abuse, referral and date reported to Law Enforcement/Child Protective Services. It is the responsibility of local Law Enforcement/Child Protective Services to initiate the investigation. Therefore only basic information is to be kept on file at the school level.

Mr. Chairman, Mr. Vice Chairman, and Distinguished Members of the Committee:

I am Herb Becker, Director of the Office of Tribal Justice at the Department of Justice. It is my pleasure to appear before you today to discuss the Department's support for S. 441, the reauthorization of the Indian Child Protection and Family Violence Prevention Act.

This historic and critical Act codifies the efforts of Congress, tribal leaders, and the Executive Branch to address and to rectify the abuse of children in Indian Country. The Act seeks to improve law enforcement investigations and to fund crucial services for victimized children and their families. In enacting this legislation, Congress carefully reviewed the devastating problem of child abuse in Indian Country. The men and women of the Congress also took to heart the unique trust relationship that the United States holds with Indian people -- a relationship that is grounded in the United States Constitution and over 150 years of federal law.

Since the enactment of the Indian Child Protection and Family Violence Prevention Act, we have made great strides toward accomplishing the goals of the Act. I will highlight these steps, but before I do so I must tell you that we can do more; we must not stop short with these first steps. The Act must be reauthorized to fully accomplish the goals of identifying the extent of child abuse and family violence in Indian Country,

reducing such incidents, and providing funds for mental health treatment for victims of child abuse and family violence in Indian Country.

The Act creates the parameters for ensuring protection of child victims by delineating certain reporting criteria. Meeting these criteria, however, requires extensive coordination and the expenditure of resources. For example, although the Act delineates the roles of child protection workers and of law enforcement officers, these people must travel great distances to respond to victims and their families. These distances have the potential to preclude effective service.

As you have heard and will hear from the testimony of others, especially Ms. Ada Deer and her capable staff, there has been a dramatic increase in reporting of child abuse in Indian Country. The mandate of the Act to report these cases is working, and the mandate of the Act to improve investigations has led to progress. But progress is not tantamount to accomplishment.

To accomplish the goals expressed by Congress in the Act, in 1990 the Department began a review of its prosecutive efforts in the area of child abuse in Indian Country. The Department, through the United States Attorneys' Offices, with the support of the Criminal Division, is committed to the consistent and

effective investigation and prosecution of these crimes against children in accordance with the Indian Child Protection and Family Violence Prevention Act and the trust responsibility of the United States toward American Indian people.

Another hallmark of the Department's commitment to these issues was the historic Listening Conference on May 5-6, 1994 in Albuquerque, New Mexico, which brought tribal leaders together with the Attorney General, the Secretary of the Interior, and the Secretary of Housing and Urban Development to discuss critical issues affecting American Indian tribes and nations. Arising from the Listening Conference was the pledge that the Department will strive to address child abuse in Indian Country.

The Department believes that this goal can be accomplished through training, coordination, and the establishment of guidelines -- guidelines which actuate the purposes of the Indian Child Protection and Family Violence Prevention Act. Much progress toward this goal has been made by the United States Attorneys' Offices and the Criminal Division. One means of achieving this goal is to assure the development and utilization of memoranda of understanding (MOU) between federal, tribal, and state entities that set forth local guidelines for child abuse reporting, investigation, and prosecution. Such MOUs allow us to overcome problems of overlapping jurisdiction by forging working relationships between tribes, federal agencies, and states.

These relationships allow all parties to work together to ensure that child abuse is dealt with effectively. Of equal importance, MOUs allow these crimes and the problems of the victims to be addressed in a way that respects tribal sovereignty and draws on tribal wisdom.

Oklahoma provides an example of how MOUs have proved helpful. Last August, in Oklahoma, sixteen Indian tribes and nations gathered together with United States Attorneys Stephen Lewis and John Raley, the FBI, BIA, IHS, and state of Oklahoma, to approve procedures to address Indian child abuse. This MOU guides the reporting, investigation, and prosecution of physical and sexual abuse of Indian children.

The genesis of this MOU was the Fall 1993 Memorandum of Understanding Between the BIA and the FBI regarding law enforcement in Indian Country. Shortly thereafter, at a meeting of United States Attorneys, Attorney General Janet Reno underscored the need for interagency and tribal partnerships in responding to crimes against children in Indian Country. She stated that "[s]imple things such as opening lines of communication can often have the most profound effects." United States Attorneys Stephen Lewis and John Raley took her message back to Oklahoma, and began developing -- with the assistance and commitment of the BIA, FBI, IHS, and the Indian tribes in the Northern and Eastern Districts of Oklahoma -- a MOU for the

reporting and investigating of child abuse. This MOU is modeled on the Indian Child Protection and Family Violence Prevention Act. I will submit a copy of the MOU for the record.

Shortly after approval of the MOU in the Northern and Eastern Districts, the Western District of Oklahoma gained approval of a similar MOU with federal and state agencies and 18 tribes. Thus, the Indian Child Protection and Family Violence Prevention Act has led to concrete arrangements to address child abuse in Indian Country. If we can achieve these sorts of arrangements in Oklahoma, where the jurisdictional problems are the most complex, we can begin the task throughout Indian Country.

Furthermore, several additional districts have multidisciplinary teams in place to address child abuse. These multidisciplinary teams consist of professionals from the various disciplines that protect and treat abused children, and assist in the prosecution of their offenders.

In addition, Department's commitment to addressing child abuse in Indian Country is reflected in its efforts to bring together federal, tribal, and state agencies in a series of meetings. The Department coordinated the first national meeting of federal, tribal, state and local agencies and organizations to address the issues associated with child sex crimes. The meeting

-- which was held in Seattle, Washington, on September 21-23, 1993 -- resulted in many initiatives based on suggestions from the United States Attorneys, the Criminal Division, Office for Victims of Crime (OVC), FBI, BIA, and the Office of Policy Development. The Department, working in conjunction with the BIA, has scheduled for 1995 numerous training conferences for federal and tribal law enforcement officers, child protection workers, and prosecutors. These conferences include five BIA and OVC funded regional conferences specifically addressing child abuse and domestic violence in Indian Country.

The FBI and the BIA also have taken steps to coordinate their law enforcement efforts in Indian Country. Last year, the FBI and the BIA held a Roundtable discussion of issues affecting law enforcement in Indian Country. A second such meeting is scheduled for this April. The purpose of these meetings is to enhance communication, coordination, and investigation of criminal cases in Indian Country. In step with the provisions Congress delineated in the Indian Child Protection and Family Violence Prevention Act, we are combining our skills, knowledge, expertise, experience, and resources in such a way as to provide the best possible federal response to child abuse and to the victims of these terrible crimes.

The Department is committed to fulfilling its duty under the Act to investigate and prosecute child abuse in Indian Country.

However, additional treatment for the victims of abuse and their families must be provided to break the cycle of violence. Investigators and child protection workers must be trained to deal properly and effectively with these crimes against our children and families -- crimes which, in the hearts and minds of many, are the most complex and egregious of all crimes affecting our society.

Thank you for the opportunity to testify in support of S. 441. We believe that a good foundation is in place and that key relationships have been established to ensure effective prosecution and victim services in Indian Country. We look forward to continuing our efforts in this area, which is so vitally important to the children and families in American Indian communities. In closing, I am reminded of a quotation by Will Rogers, a member of the Cherokee Nation who frequented the halls of Congress. He told us that "we will never have true civilization until we have learned to recognize the rights of others." The Indian Child Protection and Family Violence Prevention Act is a great step toward recognizing the problems of crime in Indian Country and guaranteeing that American Indian children enjoy the full protection of our criminal justice system.

This concludes my prepared testimony. I am pleased to answer any questions that the Committee may have at this time.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made by and between the United States Attorneys' Offices for the Northern and Eastern Districts of Oklahoma; Federal Bureau of Investigation (FBI); Oklahoma Department of Human Services (DHS); Bureau of Indian Affairs (BIA); Indian Health Services (IHS); the Cherokee Nation, and through the Cherokee Nation, the leaders of the Delaware and Loyal Shawnee citizens of the Cherokee Nation; the Muscogee (Creek) Nation; the Osage Nation; the Pawnee Tribe; and the Miami Agency, which includes Quapaw, Wyandotte, Eastern Shawnee, Seneca-Cayuga, Miami, Peoria, Modoc and Ottawa Tribes; the Chickasaw Nation of Oklahoma; the Choctaw Nation of Oklahoma; the Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Pursuant to 25 U.S.C. § 2801 et seq., 25 U.S.C. § 3201 et seq., and the memorandum of understanding between the United States Department of the Interior, Bureau of Indian Affairs, and the United States Department of Justice, Federal Bureau of Investigation, the United States Attorneys' Offices for the Northern and Eastern Districts of Oklahoma have prepared the following guidelines for the investigation of child sexual/physical abuse or neglect in Indian Country as defined by 18 U.S.C. § 1151.

I. GOALS

The goals of these guidelines are the protection and safety of the child victims and the identification and prosecution of the perpetrator. This MOU shall not alter or amend any existing agreements, memoranda of understanding, treaties, regulations or statutes between tribes and/or agencies named herein.

II. GUIDELINES TO BE USED

These guidelines are to be used in all reported cases in which incidents of child sexual or physical abuse or neglect occur in Indian Country involving:

A. an Indian child, or
B. an Indian perpetrator, including a minor, or
C. a non-Indian perpetrator involving Indian child victims.

III. MULTIDISCIPLINARY TEAMS

The investigation of all child sexual/physical abuse or neglect cases shall be undertaken by a Multidisciplinary Team (MDT), when feasible. An MDT, as defined in 25 U.S.C. § 3209 and 18 U.S.C § 3509, shall include, but is not limited to, personnel with a background in:

A. law enforcement,
B. child protection services,
C. juvenile counseling and adolescent mental health, and
D. domestic violence.

IV. INITIAL REPORT

When an initial report of child sexual/physical abuse or neglect involving an Indian child and/or an Indian perpetrator is received by the Oklahoma Department of Human Services (DHS), the Indian Health Services (IHS) or the Child Protection Services agency of an Indian Tribe (CPS), each relevant agency/person within Sections A, B, C and D must be notified by phone immediately (within 12 hours):

A. Law enforcement agencies:

1. Osage Agency (918) 287-1847
2. Miami Agency (918) 542-6921
3. Cherokee Nation (918) 456-9224
4. Muscogee (Creek) Nation (918) 756-8700 ext. 382
5. Pawnee Tribe (918) 762-3013
6. Chickasaw Agency (405) 436-0784
7. Choctaw Nation (405) 286-3977
8. Wewoka Agency (405) 257-6259
9. Thlopthlocco Tribal Town (918) 623-2620 or (918) 623-0419

- or -

In the event that the above law enforcement agencies cannot be reached, call:

1. Muskogee BIA (918) 687-2266
2. Anadarko BIA for Pawnee Tribe (405) 762-2335
3. BIA Child Abuse Hotline 1-800-633-5155, if unable to contact the Muskogee or Anadarko offices

- and -

B. United States Attorney's Office
(918) 581-7463 (Tulsa) or (918) 687-2543 (Muskogee)

- and -

C. Child Protection Services for the tribal affiliation of the victim

1. Cherokee Nation (918) 456-0671
2. Muscogee (Creek) Nation (918) 756-2112
3. Osage Nation (918) 287-4615
4. Quapaw Tribe (918) 542-1853
5. Seneca-Cayuga Tribe (918) 542-6637
6. Pawnee Agency (918) 762-2585 or 1-800-521-5432
7. Chickasaw Nation (405) 436-7253
8. Choctaw Nation (405) 924-8280
9. Seminole Nation (405) 257-6287
10. Thlopthlocco Tribal Town (918) 623-2620 or (918) 623-0419

- and -

D. FBI: (918) 664-3300 (Tulsa); (918) 687-7500 (Muskogee); (405) 223-2018 (Ardmore); (405) 924-4382 (Durant); (918) 423-1413 (McAlester); (405) 842-7471 (Oklahoma City); (405) 879-3175 (Hotline)

Initial notification must occur irrespective of the location of the child, perpetrator or the alleged crime. **Failure to report is a federal criminal offense.**

V. 36-HOUR REPORTS

Within 36 hours of the initial report, the agency (state or local law enforcement, DHS, IHS or CPS) which received the report shall follow the telephone report with a written report to the agencies/persons notified under Section IV which contains the following:

A. The name, address, age and sex of the child that is the subject of the report, including current whereabouts;

B. The grade and the school in which the child is currently enrolled;

C. The name and address of the child's parents or other person responsible for the child's care and the current whereabouts of the parents or other person responsible for care;

D. The name and address of the alleged offender and whereabouts;

E. The name and address of the person who made the report to the agency;

F. A brief narrative as to the nature and extent of the child's injuries, including any previously known or suspected abuse of the child or the child's siblings and the suspected date of the abuse;

G. Any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse, i.e. emergency room reports, previous court cases, etc.

VI. INDIAN COUNTRY JURISDICTION

Upon receipt of the initial report, if possible, or the 36-hour report, BIA or Tribal Law Enforcement will take immediate action to determine if it is probable that the alleged offense occurred in Indian Country. For the purpose of further investigation it shall be presumed, unless otherwise established, that if the child or the perpetrator resides in Indian Country, the probability exists that the offense occurred in Indian Country.

VII. COORDINATION OF LAW ENFORCEMENT

If it is determined by BIA or Tribal Law Enforcement that the probability exists that the offense occurred in Indian Country, BIA or Tribal Law Enforcement shall notify the local Resident Agency of the FBI. The law enforcement agencies will make a determination as to which agency will conduct the investigation or if they will conduct a joint investigation together with each other or any other federal, state or local law enforcement agency, and a matter will be opened in the United States Attorney's Office.

VIII. DETERMINATION OF NEED FOR REMOVAL

The investigative agency or agencies working together with the MDT shall make an initial assessment to determine the following:

A. the probable facts,
B. the need for protection,
C. the need for removal, and
D. what other actions need to be taken for the safety and the protection of the child.

This information shall be conveyed in writing to all members of the MDT, the United States Attorney's Office, and the prosecutorial agency responsible for emergency removal.

IX. EMERGENCY REMOVAL

If immediate removal is necessary, the responsible law enforcement agencies and/or child protection service will follow the appropriate procedures for emergency removal.

X. TEMPORARY OR PERMANENT REMOVAL

If temporary or permanent removal is necessary, the appropriate child protection service worker and/or law enforcement officer will prepare the necessary information and present to the proper prosecutorial agency for the filing of appropriate court documents.

XI. NEED FOR INCARCERATION OF PERPETRATOR

On a case-by-case basis where, in the judgment of the investigative agency or agencies in consultation with the MDT, and the Assistant United States Attorney assigned to the case, separation of the child from the offender is necessary for the child's protection and cannot be accomplished and maintained without incarceration of the perpetrator, the Assistant United States Attorney may initiate the filing of a complaint or an indictment, where probable cause exists, and obtain the detention of the offender. This should be done only in cases where the investigation can reasonably be expected to be completed and the case prepared for trial in compliance with the Speedy Trial Act. In this regard, where necessary, cases of this nature should be given priority by all concerned since detention of the offender may be the only practical way to protect the child.

XII. MEDICAL EXAMINATION

An immediate medical examination will be arranged if there is an acute need, such as injury to the child, which requires medical attention, or the need to preserve evidence, such as the preparation of a rape kit or other examination, or existing conditions make it advisable. Otherwise, a medical examination will be arranged in the normal course of business.

XIII. FORENSIC PSYCHOLOGICAL EVALUATION

A forensic psychological evaluation will be arranged during the investigation process, unless special circumstances such as threatened suicide or perceived danger to the child or others exist necessitating immediate evaluation.

XIV. FOLLOW-UP SERVICES

Counseling and other follow-up services will be arranged for the victim and family members as necessary or advisable by the MDT.

XV. FEDERAL PROSECUTION

The completed investigation will be presented to the United States Attorney's Office by the investigative agency or agencies with the assistance of the MDT.

XVI. LIAISON WITH VICTIM

After presentation to the United States Attorney's Office, the investigating officer or victim/witness coordinator will act as liaison with the victim and the family, the service providing agencies, and others as necessary.

XVII. CRIMINAL JUSTICE PROCESS

The investigating agent, Assistant United States Attorney, or victim/witness coordinator, with the assistance of the other service providers, shall assist in familiarizing the victim with the criminal justice process, the courtroom, travel and lodging arrangements during court appearances, counseling, victim impact statements, entry into the Bureau of Prisons Victim/Witness notification program, and other needs as they are determined.

90-097 O - 95 - 5

UNITED STATES ATTORNEY'S OFFICE
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEVE LEWIS
United States Attorney

8/29/94
Date

UNITED STATES ATTORNEY'S OFFICE
FOR THE EASTERN DISTRICT OF OKLAHOMA

JOHN RALEY
United States Attorney

29 August '94
Date

FEDERAL BUREAU OF INVESTIGATION

BOB A. RICKS
Special Agent in Charge

29 August '94
Date

OKLAHOMA DEPARTMENT OF HUMAN SERVICES

LYNDA K. ARNOLD
Division Administrator

8/29/94
Date

BUREAU OF INDIAN AFFAIRS

L. W. COLLIER, JR.
Area Director - Anadarko Area Office

29 Aug 1994
Date

MERRITT E. YOUNGDEER
Area Director - Muskogee Area Office

8-29-94
Date

INDIAN HEALTH SERVICES

Ronald A. Gunn — 8/29/94

DR. BOB HARRY — Date
Area Director

CHEROKEE NATION

Wilma P. Mankiller — 8/27/94

WILMA P. MANKILLER — Date
Principal Chief

Witnesses:

LEWIS B. KETCHUM — Date
Leader of the Delaware Citizens of the Cherokee Nation

DON GREENFEATHER — Date
Leader of the Loyal Shawnee Citizens of the Cherokee Natioo

MUSCOGEE (CREEK) NATION

8-29-94

BILL FIFE — Date
Principal Chief

OSAGE NATION

George E. Tallchief — 8/29/94

GEORGE TALLCHIEF — Date
President

PAWNEE TRIBE

Lawrence H. Mathews — 10/21/94

ALEX MATHEWS — Date
President

MODOC TRIBE

BILL G. FOLLIS
Chief

8/29/94
Date

OTTAWA TRIBE

CHARLES DAWES
Chief

10-30-94
Date

CHICKASAW NATION

BILL ANOATUBBY
Governor

8/29/94
Date

CHOCTAW NATION

HOLLIS E. ROBERTS
Chief

8/29/94
Date

SEMINOLE NATION

JERRY G. HANEY
Principal Chief

8/29/94
Date

THLOPTHLOCCO TRIBAL TOWN

CHARLEY McGERTT
Town King

11-23-94
Date

QUAPAW TRIBE

Grace Marie Goodeagle — Aug. 29, 1994

GRACE MARIE GOODEAGLE — Date
Chairperson

WYANDOTTE TRIBE

Leaford Bearskin — 31 Aug 1994

LEAFORD BEARSKIN — Date
Chief

EASTERN SHAWNEE TRIBE

George J. Captain Fox — Aug 29, 1994

GEORGE J. (BUCK) CAPTAIN — Date
Chief

SENECA-CAYUGA TRIBE

Terry L. Whitetree — August 29/1994

TERRY L. WHITETREE — Date
Chief

MIAMI TRIBE

Floyd E. Leonard — 10·30·94

FLOYD LEONARD — Date
Chief

PEORIA TRIBE

Donald E. Giles — Oct. 30, 1994

DONALD E. GILES — Date
Chief

BAY MILLS INDIAN COMMUNITY

Testimony Presented to the

Senate Committee on Indian Affairs
Russell Senate Office Building, Room 485
Washington, D.C. 20510-6450

Reauthorization for P.L. 101-630 Indian Child Protection and Family Violence Prevention Act

Date: March 22, 1995

The Bay Mills Indian Community is in support of S. 441, the McCain bill to reauthorize funds for the Indian child Protection and Family Violence Prevention Act for fiscal years 1995, 1996, and 1997.

Definite need exists for services to protect our children from further abuse and neglect and to prevent family violence from occurring in Tribal communities. Statistics have shown a high rate of child sexual abuse on our reservation (approximately 24% of our youth suffered abuse in the 1990 crisis). Contributing factors to the crisis are a significant number of dysfunctional families, lack of structured activities for the youth, substance abuse, and economic difficulties. Our Tribal community has acknowledged these problems and understands that the Tribe itself must address these issues if the community is to become a healthy environment in which we may nurture our children into adulthood.

If there are any initiatives at the BIA and IHS Area Offices to implement this act, it is difficult to see at our local Tribal level how the BIA or IHS Area Offices are following through on these initiatives. Consequently, the Tribe developed its own program with little on-going assistance from the BIA or IHS, other than on a regulatory basis.

The Family Violence Prevention Act requires a criminal background check on potential employees who may have contact with vulnerable individuals. Presently, there is no mechanism in place to determine if an individual has committed a crime not registered on the state lien system or NCIC registry. The information requested by the Tribe for individual background checks is very limited. It is recommended the FBI and/or another agency be encouraged to facilitate the Act's intent, so that a national data base is available for tracking all individuals with a criminal record.

The Tribe is concerned about last year's amendments which transferred functions and authority from BIA to IHS. This transfer

of functions and authority results in IHS assuming more responsibility for the health and welfare of these families. How can IHS assume more responsibility if they are downsizing as a result of Self Governance, the new P.L. 93-638 amendments, Vice President Gore's reinvention of government and administrative budget cuts in general.

Also of great concern to the Tribe is the movement toward block granting. In the past the Tribes have not fared well in dealing with the states in this process. Because of the difficulty in accessing funds given to the state, the Tribe recommends that a different system be considered to ensure fair and equitable treatment to Tribes for medical care and child care needs for Victim's of Crime, and for combatting violent behavior in the community. The Tribe requests Senator McCain's consideration of this issue.

PROBLEM/NEEDS STATEMENT

The Tribe experienced a crisis of child sexual abuse cases in June 1990. The ages of victims ranged from 1 1/2 years to 17 years. During the crisis the Tribe had to address numerous barriers to problem resolution while meeting the immediate needs of the victims.

Barriers initially identified by the Tribe are as follows:

- Lack of trained staff to do investigations.
- Lack of trained staff to provide treatment to victims and their families.
- Critical shortage of space to house staff.
- Overall lack of funds for addressing the problem.
- Rural, isolated location of this Indian Community.

Although Protective Services figures indicate a reduced incidence of child sexual abuse, we are still concerned about prevalence.

Prevalence is a concern because of the following:

1.) the Tribe acknowledges that the earlier crisis identified is a possible indicator of a larger problem, and

2.) there have been documented incidents of victims acting as juvenile sexual perpetrators.

Family violence has been identified in the community through reports received by the Tribal Social Service Program and the Law Enforcement Department. Statistics provided by the Law Enforcement Department show that 22% of the complaints they received in 1994 are family violence problems.

Causative factors in the widespread problems in the life of this community include prevalent substance abuse, many disadvantaged families, a rural isolated setting, and insufficient resources.

ACTION STEPS TAKEN AND THEIR IMPACT

- Funding was secured from state and federal agencies for adequate staff and space to implement a child sexual abuse program. The Tribe received a congressional add on in the amount of $99,000 to the IHS Mental Health budget. The IHS Mental Health Branch has demonstrated a reluctance to continue providing those funds to the Bay Mills Indian Community. Finally, after four (4) years the funds were included in our base budget as recurring funds through the IHS.

- As a result of the passage of P.L. 101-630, Indian Child Protection and Family Violence Act, the Bay Mills Indian Community adopted a new Juvenile Code to incorporate those parts of the Act with which tribes must comply.

- In addition the tribe has developed a broad continuum of mental health and case management services. On-site staff

include a Ph.D. psychologist, two Master's level certified social workers, and a Master's level marriage and family therapist. Two Bachelor level social workers provide case management and investigative expertise. Psychiatric services as well as other in-patient and placement services, are available contractually.

- Extensive mental health/social service staff training has focused on interviewing, assessments and treatment of sexual abuse victims. Recent training focused on developing community-based treatment services for juvenile perpetrators. Training for law enforcement personnel in investigative interviewing has also been provided (the investigative team training is an on-going need).

- Mental health/social services staff have developed treatment plans for the provision of services to victims and their families (identifying low and high risk families in the development of treatment regimens), and collaborated with Eastern Upper Peninsula CMH and Chippewa County DSS to assure coordination of services.

- The Community Response Team secured training from a sexual abuse training expert out of the Naitonal Indian Justice Center. In addition, the team designated a part-time coordinator to organize the Team's activities.

- Our psychologist has performed psychological evaluations on identified victims of child sexual abuse.

- Community prevention, awareness and education continue to be offered. Information has been presented to adolescents on sexuality and development. Safety information for younger children has been provided through events such as a Saturday Kids Safety Day and through our summer camp activities.

RECOMMENDATIONS

Statistics reveal that in the past year 28% of the original child sexual abuse cases received direct services from Bay Mills mental health staff. Law enforcement reports show approximately 22% of complaints involved family violence. (please see attachment)
To continue necessary treatment and prevention services to victims, their families, and the community in general, the Tribe recommends the following:

- Continued access to the resources necessary to support staff and services. Although staff turnover is down and the percentage of Native American staff increased, we still must vigorously pursue appropriate training and clinical support for these staff.
- Continued Tribal provision of mental health services, both direct and contractual.
- Continued community education and prevention, including parenting education.
- Expansion of structured youth activities.
- Continued support of Community Response Team and its efforts to develop a community-driven response to problems.
- Continued specialized training and development of juvenile perpetrators treatment services locally.

AND FURTHER,

- The Tribe strongly urges that Congress ensure that there are "set asides" for Native Americans for direct access to those funds in the Block Granting process.
- The Tribe desires improved ability of the Indian Health Service and the Bureau of Indian Affairs to provide specialized technical assistance and consultation in the area of child abuse and neglect.

Child Sexual Abuse Cases - Mental Health Activity in 1994

The following statistics have been gathered by chart review:

[TOTAL CASES from 1990 child sexual abuse crisis]		[71]
ACTIVE CASES [from the 1990 count] in 1994		20
percentage of cases from 1990 count active	28%	
CASES RECEIVING FAMILY SERVICES	70%	14
CASES RECEIVING SCHOOL SERVICES	60%	12
CASES RECEIVING INDIVIDUAL SERVICES	50%	10
CASES RECEIVING FOSTER CARE	10%	2
CASES RECEIVING PSYCHIATRIC CARE (psychiatric evaluation)	15%	3
CASES RECEIVING INPATIENT CARE (psychiatric hospitalization)	10%	2

1994 Law Enforcement Report on Complaints from Bay Mills Housing

Sergeant Ronald Carrick of Bay Mills Tribal Law Enforcement offered the following reports on complaints in 1994 from reservation housing:

TOTAL COMPLAINTS (EXCLUDING SERVING OF PAPERS)	99
COMPLAINTS INVOLVING FAMILY VIOLENCE	22
PERCENTAGE OF TOTAL	22%

Bay Mills Protective Services 1994 Statistical Report

Protective Services Worker Susan Stretke reports the following referrals from 1994:

COMPLAINTS OF CHILD NEGLECT	45
COMPAINTS OF CHILD ABUSE	9
TOTAL COMPLAINTS:	54

ADDENDUM TO BAY MILLS TESTIMONY ON INDIAN CHILD PROTECTION AND FAMILY VIOLENCE ACT - BRIEF COMMENTS ON SECTION 409, 410, 411

Section 409 INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM

We recommend that decisions be based on Tribal need and funds be directly given to Tribes.

RATIONALE: The Resource Requirement Methodology employed by IHS is not responsive to the needs of small tribes. If a child sexual abuse crisis is identified in a smaller Tribe, their needs are as comprehensive as are the needs of a larger Tribe. The array of services required to address the problem is the same whether the Tribal population is small or large. We experienced considerable difficulty in accessing funds Congress had earmarked for our Tribe. We recommend grants be directly funded to the Tribes.

Section 410 INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS

We recommend that there be specialized contractual services developed on a regional basis. Such specialized services might include child and adolescent psychiatry or psychology.

RATIONALE: The preference would be for all funding to be direct to local Tribes. However, it would be more cost effective to have specialized consultation services available on a regional basis, rather than small Tribes having no resources locally.

We recommend regional training on a semi-annual basis to train Tribal staff in child sexual abuse investigation and treatment or post traumatic stress disorder treatment. This training should address needs of all staff involved in child sexual abuse - mental health, social services, law enforcement, judicial staff - and should include Tribal leaders.

RATIONALE: Regional training would be more cost effective and would allow Tribal staff to be trained in culturally relevant ways. Generic training for community mental health staff may not take into account the Tribal traditions or culture.

We recommend technical assistance be available for the development of youth programs, particularly for summer or after school hours, which would offer adventure-based and cultural activities to enrich our youth and promote self confidence and a positive identity as Native American youth.

RATIONALE: Specialized youth activities focus on changing patterns and perceptions so that we can prevent the patterns of abuse or violence from emerging in the next generation.

In summary, we need to develop expertise in identifying, prioritizing, and treating needs of victims and families who have suffered abuse or violence. We must be able to educate parents about what causes some children to be more vulnerable to abuse, and involve them in the treatment process, so that they can become "natural helpers" for their children.

Tribes need to develop awareness of the factors that make a community vulnerable to crises such as the one we endured in 1990.

Section 411 INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM

We recommend training programs be made available for professional and paraprofessional personnel who may be the "first responders" to family violence incidents.

RATIONALE: The first responders are in the best position to offer information on resources and help available for the victim; they may encourage a victim to seek out help.

We recommend that resources and technical assistance be available to foster community mobilization efforts aimed at increasing community awareness and changing community perceptions of the problem. An integrated multi-disciplinary approach needs to be developed in a manner allowing self-determination for local Tribes.

RATIONALE: Without a self-determined community mobilization effort to explore the underlying factors which create the environment for victimization, we will not be prepared to effectively respond to our community problems. We need to move the whole community toward healthy traditions and culture.

TESTIMONY OF PRESIDENT ALBERT HALE
NAVAJO NATION
S. 441

Senator McCain, the Navajo Nation thanks you and the Senate Committee on Indian Affairs for your continuous effort of combating the cycle of family violence - a web of violence which includes child abuse, child neglect and child sexual abuse.

We are firmly in support of reauthorizing P.L. 101-630, especially in particular of appropriations for programs in sections 409(e), 410(h) and 411(i). Although P.L. 101-630 was enacted in 1990, it has not been funded to specifically address the escalating problems of child abuse in Indian country.

Our statistics show the problem of child abuse is an ever growing problem. It is devastating our young vulnerable Navajo children. I am including in my testimony statistics on the Navajo Nation population which reflect the high risk factors associated with child abuse. We have a population with a high rate of unemployment 27.9% and a 56.1% of persons below the poverty level. (Source: both 1990 Census) Further, we have a very young population; 43.5% is under 18 years of age. Presently, this population group is estimated at 70,634.

The annual growth rate of the Navajo people is 2.87%. This high growth may, in part, be due to the significant importance placed on children. A child in the Dine' (Navajo) belief is a gift from the Gods, upon its birth there is a celebration of ***hozhoji*** *(the 'beauty way").* A child brings great joy, happiness, and love. A child is a sacred being, entitled to a life of prayer, the ***hozhoji*** of good thoughts, good planning and longevity. This philosophy and belief was carried by the Navajo people from one generation to another. It was the main stay of care and security of families. Sadly, times have changed and families are faced with a multitude of problems. We now must acknowledge the existence of child abuse across all populations and develop mechanisms to counter the devastation it is causing.

The Navajo Nation already is attempting to confront the problems of child abuse with initiatives to protect the safety of our children. We are strengthening the families' ability to improve their children's healthy development. Additional funding will help us improve the development of a more responsive, collaborative family service system - not "stand-alone" services.

My administration's approach is to involve local communities, so our planning and coordination efforts will have a direct impact on community concerns. We want to incite families and have them recognize and build upon their strengths, and the strengths of their communities. Community service systems require broad and intense involvement of parents, community folks, and every governmental agency serving children, all of who play important roles in the prevention of child abuse. It is our stance to have an organized unified concerted effort in confronting child abuse.

With previous appropriations, the Navajo Nation has developed crisis-oriented programs for sexually abused Navajo children across the reservation. As you know, the Navajo Nation is approximately the size of West Virginia. With a sparsely distributed population of 6.67 people per square mile, the demand for any type of public safety enforcement coverage is overwhelming. The special appropriations from Congress of $594,836 is received through the Bureau of Indian Affairs and the Indian Health Service. Each providing approximately 22%. The Navajo Nation government, concerned with the negative impact this problem has on the future of our children, has provided 56% of the total funding to the Navajo Nation Child Abuse Prevention project. With the massive geographic coverage, there exist a hidden majority of child abuse cases unreported, an increase in incidents, and the complexity of involving parents and program services, the project has only begun addressing crisis-oriented cases. The project instills the importance of Navajo cultural aspects in its therapy approaches. Including the emphasis of *Ke'* a social behavior guidance of kinship and clan relationships. Appropriate beliefs and customs are accommodated in family and victim counselling and mental healing.

The Navajo Nation has generated a collaborated effort among tribal, federal and private entities to combat and respond to child abuse. This has increased our ability to address child abuse in a collective manner and identify the gaps in services. The effort brings together ideas on how to deal with the problems of referrals; improve methods of treatment; response time; clientele data base management; and resolving unaddressed needs.

Although the Navajo Nation is in support of this bill, it has concerns in regard to the funding distribution formula being implemented by the Bureau of Indian Affairs under this Act. The funding formula proposed by BIA for allocating FY 96 appropriations is not based on the number of children within eligible tribal population areas, meaning federally-recognized Indian reservations. The children population are the *intended recipients* under this Public Law. The proposed formula is based on the *total number of federally*

recognized tribes, not the population within the tribal service areas (reservation)! We are adamantly opposed to the distribution of these funds in this manner.

Further, the ICWA funding formula has no connection to P.L. 101-630, therefore, why is it the basis for the distribution of funding?

The Act must establish and stipulate an equitable funding formula based on reservation children population of under 18 years of age. There should be no cap on the funding, but rather full consideration of the population groups being confronted with complexities of child abuse. This provides funds more directly to the children who are the victims.

The continued increase of sexually abused children across our reservation and other reservations is alarming. It is essential that this Act be reauthorized; related funding could help our efforts in providing a more comprehensive solution to the problems of child abuse. This disturbing problems associated to child abuse must draw the attention of your colleagues in Congress; and in hope they support not only in the reauthorization of the Act, but to also provide funding. That *true* attention will help diminish the problem and lead to a positive result oriented outcome for many of our children.

On behalf the Navajo Nation, I thank you for allowing me the opportunity to provide this testimony.

HSSCMA-28-95

RESOLUTION OF THE
HEALTH AND SOCIAL SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting and Approving the Testimony of the President of the Navajo Nation to the Senate Committee on Indian Affairs Hearing Record for the Re-Authorization of P.L. 101-630 (the Indian Child Protection and Family Violence Prevention Act) Through S. 441

WHEREAS:

1. Pursuant to 2 N.T.C. § 451, the Health and Social Services Committee of the Navajo Nation Council was established and continued as a standing committee of the Navajo Nation Council; and

2. Pursuant to 2 N.T.C. § 452, the Health and Social Services Committee's purposes is to address health and social service issues affecting the Navajo people and to legislate, promulgate, monitor, and coordinate laws, regulations, and delivery of services to reduce health and social problems consistent and in respect to the traditional practices and customs of the Navajo people; and

3. The Health and Social Services Committee of the Navajo Nation Council deems it appropriate for the Navajo Nation President to advocate for the betterment of Navajo children by presenting a testimony in firm support of the re-authorization of P.L. 101-630, the Indian Child Protection and Family Violence Prevention Act; and

4. The testimony to be presented to the Senate Committee on Indian Affairs for the record, (Exhibit "A"), will indicate the extensive need for the funding of P.L. 101-630 to address the critical issues of child sexual abuse, child abuse/neglect; and

5. The testimony will present the position of the Navajo Nation opposing the proposed BIA funding allocation to give four cents (.04) per person to the Navajo Nation, compared to Juneau, Alaska Area receiving $33.61 per person (Exhibit B). This allocation is considered inequitable and unjust distribution. The funding distribution must consider the actual children population for those under 18 years of age, rather than using allocation by number of tribes.

NOW THEREFORE BE IT RESOLVED THAT:

The Health and Social Services Committee of the Navajo Nation Council hereby supports and approves the Testimony of the President of the Navajo Nation to the Senate Committee on Indian Affairs Hearing Record for the Re-authorization of P.L. 101-630, (the Indian Child Protection and Family Violence Prevention Act) through s. 441.

HSSCMA-28-95

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Health and Social Services Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained, this 23rd day of March, 1995.

Vice Chairperson
Health and Social Services Committee

Motion: Jerry Freddie
Second: Jack Colorado

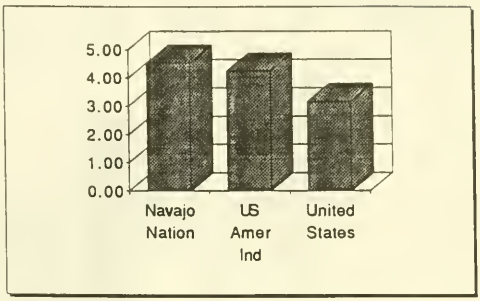
RISK FACTORS INFLUENCING CHILD ABUSE

Comparing the Navajo Nation with American Indian and US Populations

FAMILY SIZE

(Average per family)

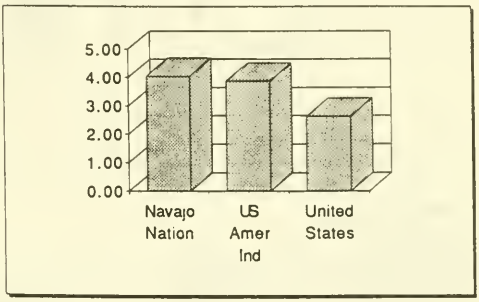
Navajo Nation	4.52
US Amer Ind Rsrvtns	4.24
United States	3.17



HOUSEHOLD SIZE

(Average per household)

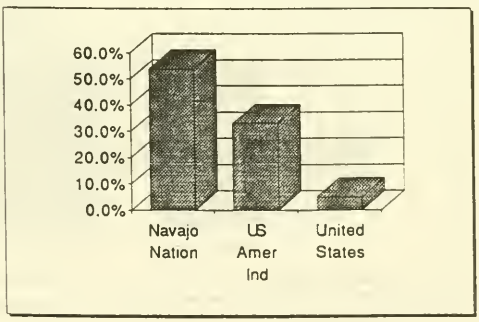
Navajo Nation	4.05
US Amer Ind Rsrvtns	3.87
United States	2.63



CROWDED HOUSEHOLDS

(Percent of households in overcrowded conditions)

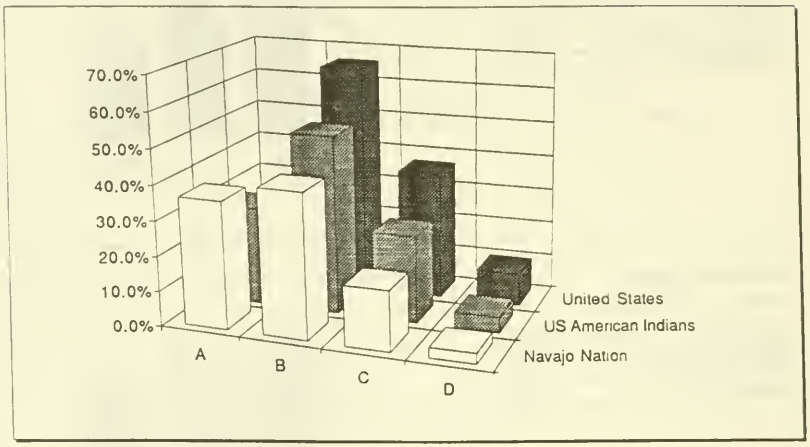
Navajo Nation	54.0%
US Amer Ind Rsrvtns	33.0%
United States	5.0%



SOURCE: 1990 Census

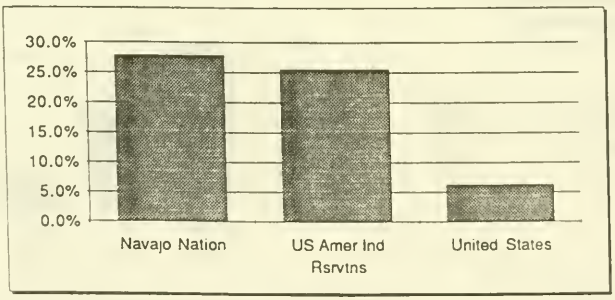
EDUCATIONAL ATTAINMENT (Percent by educational level)

	Less than 9th	HS or higher	Some College	BA or Higher
	A	B	C	D
Navajo Nation	36.4%	41.2%	17.0%	2.9%
US American Indians	28.2%	51.0%	24.9%	4.5%
United States	13.7%	65.7%	36.7%	9.4%



UNEMPLOYMENT

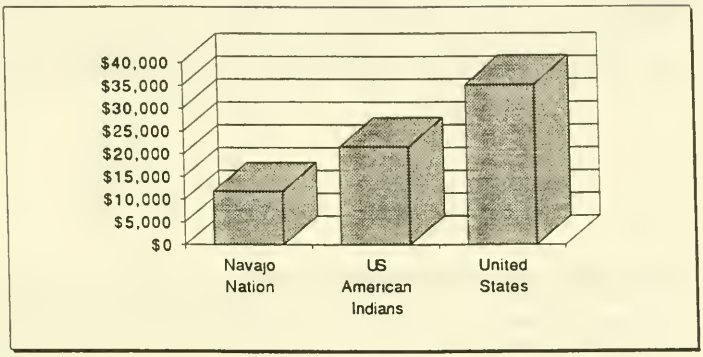
Navajo Nation	27.9%
US Amer Ind Rsrvtns	25.6%
United States	6.3%



SOURCE: 1990 Census

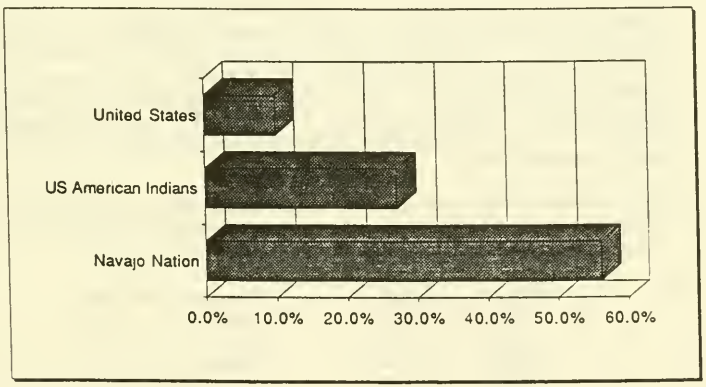
MEDIAN FAMILY INCOME ($)

Navajo Nation	$11,835
US American Indians	$21,619
United States	$35,225



PERCENT OF FAMILIES BELOW THE POVERTY LEVEL

Navajo Nation	56.1%
US American Indians	27.2%
United States	10.0%



SOURCE: 1990 Census

EXHIBIT "B"

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20245

TAKE PRIDE IN AMERICA

DEC 2 3 1994

Subject: Response to Requests for Funds Distribution Data

Four months ago, BIA conducted a national tribal consultation meeting in Oklahoma City to seek comment on proposed social services regulations and draft regulations intended to implement the Indian Child Protection & Family Violence Prevention Act (Pub. L. 101-630). A proposed set of the 101-630 regulations will soon be published, after which the BIA intends to again consult before preparing the regulations for publication in their final form.

At the Oklahoma City consultation, there was a productive exchange among participants regarding the development of a formula for distributing the limited funds that were expected to be made available to tribes under 101-630.

In recent weeks, a number of tribal and BIA staff in your area have questioned us on funding distribution options and have asked us to provide a comparative breakdown of funds that were made available to tribes under Title II of ICWA in FY 1994 -- the first year that ICWA funds were available non-competitively to all federally recognized tribes. Under the non-competitive system, funds distribution was made solely on tribal service area populations as certified by the BIA area directors. The minimum grant amount was $29,446; the maximum was capped at $750,000. The attached table contains a variety of funding and population data relative to the FY 1994 ICWA distribution.

Based on each area office's total reservation service area population and the total amount of ICWA funds provided to tribes within each area, the actual per capita FY 1994 ICWA distribution in each area was as follows:

Aberdeen ---- $11.85	Minneapolis -- $23.85
Albuquerque — 21.66	Muskogee ------ 5.50
Anadarko ------ 29.16	Phoenix ------- 19.90
Billings ------- 13.20	Portland ------- 24.79
Eastern ------- 24.36	Sacramento ----- 79.37
Juneau ------- 113.96	Navajo ---------- 3.84

The FY 1994 ICWA distribution was made based the total at that time of 534 federally recognized tribes. Although the total number of tribes has since increased slightly, we have remained consistent with the 534 figure in the sample 101-630 distribution given below. We have also employed the same total service are population that was used in the ICWA distribution. This material is intended merely to illustrate how per capita funding would break down nationally if a total of, for example, $5 million were to be equally distributed among 534 tribes ($9363 per tribe). On an area-by-area basis, the per capital distribution of the $5 million would be as follows:

Aberdeen	$1.63	Minneapolis	$4.49
Albuquerque	3.82	Muskogee	0.54
Anadarko	5.90	Phoenix	3.95
Billings	1.83	Portland	4.62
Eastern	4.46	Sacramento	22.38
Juneau	33.61	Navajo	0.04

We are hopeful that the information provided above adequately responds to your request. Please contact us if you should need any clarification of the above material or if you wish to discuss the matter further.

Attachment

DIVISION OF SOCIAL SERVICES - CENTRAL OFFICE - SERVICE AREA POPULATION ANALYSIS - BY AREAS (FY - 1994)

SERVICE AREA POPULATION	* * * * * AREAS * * * * *											
	ABR 16	ALB 24	ANA 24	BLL 8	EAS 24	JUN 209	MNP 30	MUS 14	PHX 45	POR 42	SAC 97	NAV 1
100 %	9.8%	5.4%	3.6%	3.8%	4.5%	6.4%	5.6%	22.4%	8.9%	7.9%	3.7%	18.2%
1,069,234	91,350	58,776	38,098	40,861	50,420	68,217	62,490	240,318	104,718	85,054	40,590	196,470
0 - 500 $29,446	X	4 167,784	7 266,122	X	3	182 5,359,172	8	5	18	11	78	X
501 - 1,500 $45,000	4	6 270,000	11	X	11	22	8	3	13	9	14	X
1,501 - 3,000 $65,000	2	7	2	2	6	4	5	X	6	13	3	X
3,001 - 5,000 $65,000	5	4	X	2	X	1	4	X	3	4	1	X
5,001 - 8,000 $75,000	1	2	4	4	3	X	3	X	X	3	1	X
8,001 - 20,000 $90,000	3	1	X	X	1	X	1	2	6	2	X	X
20,001 - 40,000 $130,000	1	X	X	X	X	X	X	2	X	X	X	X
40,001 - 60,000 $150,000	X	X	X	X	X	X	X	X	X	X	X	X
60,001 - 90,000 $250,000	X	X	X	X	X	X	X	1	X	X	X	X
90,001 - 140,000 $350,000	X	X	X	X	X	X	X	1	X	X	X	X
140,001 - 180,000 $500,000	X	X	X	X	X	X	X	X	X	X	X	X
180,001 - CAP $750,000	X	X	X	X	X	X	X	X	X	X	X	1
BUDGET AMT: $22,906,800 PERCENT OF TOTAL BUDGET	1,950,889 9%	1,272,794 6%	1,111,112 5%	943,680 4%	1,138,139 5%	4,434,173 20%	1,499,548 7%	1,322,234 6%	2,775,038 9%	3,186,905 9%	3,121,788 14%	750,000 3%

In recent months, questions of equity regarding the distribution of funds appropriated for Indian child and family services programs have arisen. These questions have centered on BIA's 1994 apportionment of Indian Child Welfare Act grant funds and preliminary plans for distributing any monies that may be made available under the Indian Child Protection and Family Violence Prevention Act (Public Law 101-630). By far, the largest per capita shares of the non-competitive ICWA funds were allotted to the Juneau Area. The following factual material is provided for tribal consideration as plans are developed for a fair and equitable distribution of anticipated 101-630 monies.

- In Fiscal Year 1994, a total of $22,905,000 was available for tribal Indian Child Welfare Act grants. Slightly less than one-third ($6,634,172) of the total amount was allotted to the Juneau Area to serve tribes in the State of Alaska.

- The aggregate tribal service area population in the State of Alaska (58,217) is equal to only 5.4 percent of the national total. Therefore, almost one-third of the FY 1994 appropriation for tribal ICWA programs was expended to serve about one-twentieth of the total national on-reservation Indian population.

- The FY 1994 distribution of ICWA grant funds to all tribes was delayed for many weeks due to the intervention of Senator Ted Stephens of Alaska. The delay was the result of objections raised by an Alaska organization that insisted on receiving an ADDITIONAL amount of ICWA funds as an incentive to form a consortium of tribes.

- In FY 1993, which was an ICWA transition year, consortium incentives were authorized. Tribes were informed well in advance that the 1993 incentives would be awarded on a one-time-only basis and would not be available thereafter because, beginning in 1994, ICWA funds were to be awarded to all tribes non-competitively. The Alaska tribal organization was the only group that persistently lobbied for continuation of the incentive payments and acted to delay the national ICWA distribution by attempting to force BIA to meet its demands.

- If the Alaska congressional delegation and tribal organization had succeeded in their efforts to get additional funds for consortia, a reduction in the total amount of ICWA resources available to the rest of the country would have been necessary in order to meet the incentive requirements.

In late August of 1994, BIA convened a national meeting in Oklahoma City to consult on draft regulations implementing Public Law 101-630, the Indian Child Protection and Family Violence Prevention Act. At that meeting, it was announced that if 101-630 funding becomes available, the initial appropriation is not expected to exceed $5 million.

During the Oklahoma City consultation, Tanana Chiefs Conference (TCC), an organization representing numerous tribes in Alaska, presented a plan that would require all funds appropriated under 101-630 to be distributed equally among the 534 federally recognized tribes. Under that plan, each tribe, REGARDLESS of its total membership or service area population, would receive $9363. (SEE FOOTNOTE ON PAGE 3.)

In the State of Alaska, several multi-tribal organizations have entered into self-governance compacts. An example of such an organization is Tanana Chiefs Conference in Fairbanks. According to Office of Self-Governance headquarters staff, 38 tribes were signatories to the Tanana Chiefs compact as of October 1994. If the 101-630 programs for all of Tanana Chiefs' 38 signatory tribes were to be administered centrally, total funding available to that organization under the plan they proposed in Oklahoma City would be approximately $356,000.

Based on 1994 ICWA data, the average service area population per tribe in Alaska is 278 persons; therefore, it can be estimated that the total service area population for the compact cited in the above example (TCC) is approximately 10,564. The PER CAPITA share of the limited 101-630 funds for that organization under its own plan would be $33.70. Similar per capita amounts would be awarded to the other compacted multi-tribal organizations in Alaska. In contrast, the per capita share to the nation's largest tribe would total less than five cents.

The Juneau Area has a relatively small total service area population, but it has by far the largest number of individual tribes. Service delivery in Alaska is impeded by a number of factors such as harsh weather conditions, vast distances, difficult transportation and exorbitant costs for many essential services. Although the extremes of these problems exist in Alaska, they are problems that are not uncommon in much of Indian Country at large.

Based on the atypical circumstances mentioned above, program administrators in Alaska might readily justify a need for disproportionately high levels of funding. In pursuit of additional funds, it would seem appropriate for the Juneau Area tribes to again use their access to Alaska's congressional delegaton to explore possibilities for a special annual appropriation or "add-on" for Native Alaskan programs. Such an arrangement would enable Alaska tribes and their representative organizations to meet their administrative and service obligations fairly, and not at the expense of Indian families and children in the lower 48.

NOTE: At the time of the 1994 ICWA funds distribution, there were 534 federally recognized tribes. That number has since increased to approximately 550 -- a total that would reduce the 101-630 distribution to slightly over $9000 per tribe. Due to this variable, the population and financial information provided on the preceding pages is approximate.

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